Supreme Court, U.S.
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No. 03 805

In The

Supreme Court of the United States

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STEVEN MICHELS,

Petitioner,

v.

COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON,

Respondent.

◆

**On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Washington**

◆

PETITION FOR A WRIT OF CERTIORARI

◆

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QUESTIONS PRESENTED

1. Whether the Commission on Judicial Conduct, a state agency charged with conducting quasi-criminal proceedings, violates the due process rights of a judge when it waits almost three and one-half years after receiving a complaint to file charges of misconduct against that judge.

2. Whether the Commission on Judicial Conduct violates the due process rights of a judge when panel members hearing evidence about that judge's conduct have already rejected a stipulation as to the facts and sanctions in possible settlement of his disciplinary matter.

PARTIES TO THE PROCEEDINGS

The petitioner, Steven Michels, is a municipal court judge for whom discipline was recommended by the Commission on Judicial Conduct, Washington State's judicial disciplinary body. Under the Discipline Rules for Judges, Judge Michels contested the Commission's recommended sanctions to the Washington Supreme Court. Judge Michels now petitions this Court for review of the Washington Supreme Court's decision. The respondent is the Commission on Judicial Conduct of the State of Washington.

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OPINION BELOW

The opinion of the Supreme Court of the State of Washington is reported at 75 P.3d 950 (2003) and is reproduced in the Appendix at 1. The decision of the Commission on Judicial Conduct of the State of Washington is reproduced in the Appendix at 26.[1]

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JURISDICTION

The judgment of the Washington Supreme Court was entered on September 4, 2003. The jurisdiction of this Court is invoked, under 28 U.S.C. § 1257(a), to review the judgment by writ of certiorari.

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CONSTITUTIONAL PROVISIONS INVOLVED

This case presents due process issues under the United States Constitution. The relevant constitutional amendments provide, in pertinent part, as follows:

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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[1] Information about the Washington State Commission on Judicial Conduct, including its public action against Judge Steven Michels (CJC No. 2969-F-92), is available at the Commission's website, http://www.cjc.state.wa.us.

Amendment XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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STATEMENT OF THE CASE

Steven Michels established his law practice in his hometown of Sunnyside, Washington. Since 1975, Michels has represented clients in the Yakima Valley in misdemeanor criminal cases and general business matters. In addition to his private practice, he has served as the judge of the Sunnyside Municipal Court since 1986. Judge Michels holds court each week and is available to evaluate requests for search warrants and for other court business as needed.

Soon after his appointment to the bench in Sunnyside, he agreed to serve as judge pro tempore of the neighboring Toppenish Municipal Court. Judge Michels and Judge Ramon Reid, the main judge in Toppenish, agreed to substitute for one another, at no charge to their communities, when either judge was unavailable to preside. This agreement allowed the Toppenish court to function in Judge Reid's absence – even though Toppenish could not afford to pay judges pro tempore. In 1991, Michels also became the Toppenish public defender.

The case now before the Court began with an anonymous complaint against Judges Michels and Reid that was filed with the Commission on Judicial Conduct (Commission) on March 5, 1998.[2] Appendix (hereafter "App.") 55. A second complaint was filed on December 30, 1998.[3] App. 57.

More than a year passed before Judge Michels was informed the Commission was commencing initial proceedings. App. 59. The Commission's Statement of Allegations named four defendants in whose cases Judge Michels was alleged to have participated as both judge and counsel. App. 60.

Another 18 months passed before the Commission notified Judge Michels that it was still reviewing the complaints and that it would continue its confidential proceedings. App. 62. The Commission's Amended Statement of Allegations included assertions that Judge Michels had presided over hearings in Toppenish Municipal Court in which he had been appointed as defense counsel, that he had contracted with Toppenish to provide public defender service in its municipal and district courts during the same period he served as judge pro tempore in those courts, and that he accepted guilty pleas without obtaining proper written plea statements.[4] App. 63.

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[2] Washington's substantive and procedural law regarding judicial discipline is found in Article IV, section 31 of the Washington State Constitution, chapters 2.64 and 42.52 RCW, the Code of Judicial Conduct, the Discipline Rules for Judges, and Commission on Judicial Conduct Rules of Procedure.

[3] The complaints were filed at a time when the political climate in Yakima County was volatile. Steven Michels and other local attorneys had been vocal in opposing the closure of the Lower Valley District Court offices in Sunnyside and Toppenish and the consolidation of court activities in Yakima. County officials attributed the closures to budget constraints.

The Commission filed its Statement of Charges against Judge Michels on August 27, 2001.[5] App. 69. Judge Michels then conferred with the Commission's executive director and disciplinary counsel, and he agreed to resolve the matter by accepting a reprimand.[6] App. 78. Even though Commission staff prepared the stipulation, the Commission rejected it, informing Judge Michels that the stipulated facts warranted censure and a 90-day suspension.[7] *In re Disciplinary Proceeding Against Michels*, 75 P.3d 950, 952 (Wash. 2003).

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[4] State law mandates that Commission staff investigate any complaint that is filed, but the investigation is to be "limited to the alleged facts contained in the complaint." RCW 42.52.420. Neither complaint in this matter made any reference to guilty plea forms.

[5] When the charges were filed, Judge Michels resigned as judge pro tempore in Toppenish. The improper guilty plea forms were revised. *In re Disciplinary Proceeding Against Michels*, 75 P.3d 950, 956 (Wash. 2003).

[6] "'Reprimand' means a written action of the commission that requires a judge or justice to appear personally before the commission, and that finds that the conduct of the judge or justice is a minor violation of the code of judicial conduct and does not require censure or a formal recommendation to the supreme court that the judge or justice be suspended or removed. A reprimand shall include a requirement that the judge or justice follow a specified corrective course of action." RCW 2.64.010(6).

[7] "'Censure' means a written action of the commission that requires a judge or justice to appear personally before the commission, and that finds that conduct of the judge or justice violates a rule of

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The Commission filed an Amended Statement of Charges on February 20, 2002 – *almost four years after the initial complaint was received.* Judge Michels was charged with (1) presiding as judge in Toppenish Municipal Court cases where he had previously appeared as appointed counsel for defendants, and (2) accepting guilty pleas without obtaining proper written plea statements from defendants. App. 101.

At a fact-finding hearing on April 26, 2002, the Commission accepted the stipulation of Judge Michels and its disciplinary counsel as to the allegations in the Amended Statement of Charges. App. 26-27. The Commission concluded the matter with a decision reached by a nine-member panel that included seven of the same individuals who had rejected the earlier stipulation.[8] *Michels,* 75 P.3d at 959.

In the decision filed July 15, 2002, the Commission found that Judge Michels had violated the Code of Judicial Conduct. His sanction had escalated to censure with recommendations that he be suspended from the bench for 120 days without pay and that he not be allowed to

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judicial conduct, detrimentally affects the integrity of the judiciary, undermines public confidence in the administration of justice, and may or may not require a recommendation to the supreme court that the judge or justice be suspended or removed. A censure shall include a requirement that the judge or justice follow a specified corrective course of action." RCW 2.64.010(2).

[8] Judge Michels believed that members of the Commission who had rejected the earlier stipulation had necessarily predetermined both the facts and the sanction, precluding their unbiased consideration of the additional evidence. But only one Commission member recused himself from further proceedings in the matter.

resume judicial duties in any court until he had completed a Commission-approved course for judges in limited jurisdiction courts at his own expense.[9] App. 51.

Judge Michels timely contested the Commission's recommendation of discipline to the Washington Supreme Court, which framed its analysis of the case as follows:

> At issue is whether censure and a 120-day suspension without pay are the appropriate disciplinary sanctions for a part-time judge who accepted guilty pleas from defendants whom he represented as a public defender, and who accepted guilty pleas without obtaining proper written plea statement[s] due to defective plea forms supplied by the court he was temporarily serving. Specifically, we must determine the appropriate sanctions for a judge who has violated Canons 1, 2(A), 3(A)(1), and 3(D)(1) of the [Code of Judicial Conduct]. Additionally, Judge Michels claims the Commission violated his due process rights by failing to file the charges in a timely manner and that disciplinary counsel committed prosecutorial misconduct during the hearing.

Michels, 75 P.3d at 953.

The Washington Supreme Court ultimately ordered "censure, suspension without pay for 120 days, and attendance of a judicial education approved by the Commission or the State Judicial College."[10] *Id.* at 958. As a result, Judge Michels was deprived of the opportunity to serve as judge pro tempore in Toppenish and has also been precluded from presiding in his salaried position in Sunnyside, where he was not charged with any misconduct.

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[9] "The commission is authorized to impose the following disciplinary actions, in increasing order of severity: (a) Admonishment; (b) reprimand; or (c) censure. If the conduct of the judge or justice warrants more severe disciplinary action, the commission may recommend to the supreme court the suspension or removal of the judge or justice." RCW 2.64.055.

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REASONS FOR GRANTING THE WRIT

This is a classic due process case. Judges are entitled to the protections of due process in judicial disciplinary matters, which have been described as "quasi-criminal" in nature.

The time line of events in this case documents that the Commission chose to prolong its investigation – rather than to alert Judge Michels so that his inadvertent misconduct could be remedied.[11] The complaints were used to justify continued scrutiny of Judge Michels and to springboard the Commission's inquiry from his uncompensated pro tempore position in Toppenish to his salaried position as judge in Sunnyside.[12] Although the complaints against Judge Michels made no reference to his acceptance of guilty pleas, the Commission investigated the forms used by both the Toppenish and Sunnyside courts.

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[10] "The Supreme Court may impose the sanction recommended by the commission, or any other sanction that the Supreme Court deems proper." Discipline Rules for Judges 9(c).

[11] "[T]here is no suggestion in this record that Judge Steven Michels is anything other than an honorable man who has attempted, at all times, to fulfill his duties as a judicial officer in good faith and, in many ways, with distinction. . . . The ethical violations at issue here resulted from ignorance, not malevolence. More fundamentally, they were understandable, yet still not pardonable, attempts to accommodate systemic flaws of which the judge was not fully cognizant at the time. For example, he attempted to reconcile his dual role as an appointed defense counsel and a pro tem district court judge in Toppenish by attempting to avoid presiding over his own clients and/or inviting them to somehow waive the conflict. Similarly, Judge Michels utilized a defective plea form not of his making and without realization of its defects until it was brought to his attention." *Michels*, 75 P.3d at 958.

In all the cases offered by the Commission to assert a pattern and practice of presiding as judge in cases in which he had been previously appointed as defense counsel, Judge Michels' rulings from the bench took place months or years after the complaints were filed. Likewise, all of the cases presented to assert a pattern and practice of accepting guilty pleas without obtaining proper written plea statements occurred years after the initial complaint against Judge Michels.

The Commission's censure and recommended 120-day suspension without pay are excessive sanctions. The Commission's conduct violated Judge Michels' right to due process of law by unreasonably delaying the filing of charges against him.[13]

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[12] "The City of Sunnyside has only praise for Judge Michels, stating that his 'demeanor on the bench is beyond reproach' and that his 'record on the bench has been excellent.' The City Council of Sunnyside also passed resolution No. 2002-8 on January 21, 2002, giving its full support to Judge Michels." *Michels*, 75 P.3d at 958 n.2 (citations omitted).

[13] The Washington Supreme Court's acknowledgment that "the Commission may have acted slower than normal" is an understatement. *Michels*, 75 P.3d at 957. Judge Michels' case stands in striking contrast to two other recent disciplinary actions: In the case of Judge Ralph Turco, the Commission moved from incident to decision in 27

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Judge Michels' defense was compromised by the Commission's delay in bringing charges because several recordings of the proceedings in his court were destroyed during the period between the initial complaint and the hearing. The Commission concedes that "[n]either transcripts nor tapes are available for some of the cases cited." App. 28.

The Commission has a duty to bring charges against a judicial officer with reasonable dispatch. The Commission's dilatory conduct deprived Judge Michels of due process of law. He expressly raised the due process issue before the Commission:

> After receiving the initial information which led to these complaints, the Commission held that information for as long as several years without notifying the Judge involved. After the Judge initially responded, the Commission waited more than 18 months to bring formal charges. By waiting such a long period of time, the Judge is denied the right to thoroughly defend himself as the tapes which contain the verbatim record of the proceedings involved have been destroyed. On this basis, i.e., the basis of laches, equity, statute of limitations and/or not proceeding in a timely fashion, the complaint should be dismissed. Furthermore, the Judge has been denied

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months. *In re Disciplinary Proceedings Against Turco*, 970 P.2d 731 (Wash. 1999). And Judge Eugene Hammermaster's recommended discipline progressed from complaint to decision in 25 months. *In re Hammermaster*, 985 P.2d 924 (Wash. 1999). But the Commission did not even file an amended statement of charges against Judge Michels until 48 months after it received the initial complaint, and an additional five months passed before the decision was finally filed.

> his right to defend himself and to due process therein. Also on this basis, the complaint should be dismissed.

App. 86. The Commission then stated: "Respondent has no right to notice of the filing of a complaint with the Commission. Due process imposes no such requirement, and it is contrary to article IV, section 31; RCW 2.64.113; and CJC rule 11, to say nothing of common sense." App. 93.

The Washington Supreme Court has not developed an analysis to ensure that sanctions imposed against judges are fair and uniformly applied.[14] The *Deming* court, however, articulated the following nonexclusive factors, which are to be considered in determining an appropriate sanction:

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[14] The Commission on Judicial Conduct also has jurisdiction over justices of the Supreme Court. RCW 2.64.010(4). Two of the justices who decided the *Michels* case had firsthand experience with the Commission's discipline: In 1997, the Commission determined that Justice Richard Sanders appeared at a political rally identified as a justice, carried a pro-life symbol, and aligned himself with an organization pursuing a political agenda. He was reprimanded by the Commission, but the Supreme Court reversed the disciplinary sanction, holding that a justice's First Amendment free speech right was not outweighed by the interest in preserving the impartiality of the judiciary. *In re the Honorable Richard B. Sanders*, CJC No. 96-2173-F-63; *In re Disciplinary Proceeding Against Sanders*, 955 P.2d 369 (Wash. 1998). And while Judge Michels' case was pending before the Washington Supreme Court, the Commission investigated the arrest of Justice Bobbe Bridge on charges of driving while under the influence of alcohol and hit and run of an unattended vehicle. On August 15, 2003, a stipulation, agreement and order of reprimand was filed by the Commission in Justice Bridge's case. *In re Bobbe J. Bridge*, CJC No. 4050-F-106. The Supreme Court's decision in *Michels* was filed the following month. Justice Sanders dissented and filed a separate opinion; Justice Bridge signed with the majority.

> (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; (j) the extent to which the judge exploited his position to satisfy his personal desires.

In re Deming, 736 P.2d 639, 659 (Wash. 1987). The Commission's unreasonable delay in Judge Michels' case exacerbated several of these factors.

The Commission must observe the due process rights of Washington judges accused of violating the Code of Judicial Conduct. Judges do not forfeit their constitutional rights upon assuming the bench. *See, e.g., Republican Party of Minn. v. White*, 536 U.S. 765 (2002). In fact, disciplinary proceedings of this sort are in the nature of quasi-criminal proceedings. *In re Ruffalo*, 390 U.S. 544, 551 (1968) (disbarment proceedings are quasi-criminal); *Nguyen v. Dep't of Health Med. Quality Assurance Comm'n*, 29 P.3d 689, 692 (Wash. 2001) (medical discipline is quasi-criminal). Judicial discipline must incorporate due process protections: "We hold that a judge accused of misconduct is entitled to no less procedural due process than one accused of crime." *Deming*, 736 P.2d at 650.

The *Deming* court held that a six-month period between the onset of an investigation and the filing of a complaint was not too long, clearly articulating the interests to be balanced:

> [W]hen an allegation of judicial misconduct has been made against a judge, two considerations come into play. If the allegations have merit as a violation of the Code of Judicial Conduct, they should be speedily investigated and a formal complaint filed. If the allegations are without merit, they should be speedily dismissed. A judge who is violating the Code of Judicial Conduct should be disciplined as soon as possible so that the inappropriate practice will be stopped. A judge who is unfairly accused has a right to a prompt resolution of the allegations . . . and to a prompt investigation . . . .

Id. at 649.

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CONCLUSION

Judge Michels' defense was frustrated because basic evidence was no longer available after the Commission's protracted investigation. The Commission's failure to promptly alert the judge compounded his honest mistakes into "patterns of practice" – forming the basis for further sanctions. Judge Michels did not receive the speedy trial by an impartial tribunal to which he is entitled. The Commission's conduct deprived Judge Michels of his right to due process of law.

The Court should grant Judge Michels' petition for a writ of certiorari and should reverse the decision of the Washington Supreme Court.

Respectfully submitted,

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75 P.3d 950

Supreme Court of Washington,
En Banc.

In the Matter of the DISCIPLINARY PROCEEDING
AGAINST Steven MICHELS,
Municipal
Court Judge.

No. 72857-7.

Argued Jan. 16, 2003.
Decided Sept. 4, 2003.

Talmadge & Stockmeyer, Philip Talmadge, Tukwila, Louie Delorie, Yakima, for Petitioner.

Ernest Greco, Spokane, Edwards, Sieh, Smith & Goodfriend, Catherine Smith, Seattle, for Respondent.

Aaron Hugh Caplan, Seattle, Amicus Curiae on behalf of ALCU.

Mark Allen Kunkler, Sunnyside, Amicus Curiae on behalf of City of Sunnyside.

JOHNSON, J.

Part-time municipal court Judge Steven Michels challenges a recommendation of the Commission on Judicial Conduct (Commission) ordering censure and suspension without pay for 120 days. The Commission found Judge Michels to have violated the Code of Judicial Conduct (CJC) Canons 1, 2(A), 3(A)(1), and 3(D)(1) by acting as both judge and lawyer in the same case, by failing to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, by failing to disqualify himself as a judge in cases in which he had previously served as a lawyer, by failing to enforce high standards of judicial conduct, and by failing to be faithful to the law and maintain professional competence. Judge Michels admits he engaged in the alleged conduct but argues that the punishment is excessive. We agree with the Commission's recommendation and order censure and a 120-day suspension from the bench without pay. Additionally, Judge Michels will not be allowed to resume judicial duties until he has completed a course approved by the Commission or the State Judicial College for judges in limited jurisdiction courts.

FACTS

Steven Michels has represented clients in the Yakima valley in misdemeanor criminal and general business matters for the past 27 years. In addition to his private practice, Michels has served as municipal court judge for the town of Sunnyside since 1986. Soon after Judge Michels was appointed to the bench, he agreed to serve as judge pro tempore of the Toppenish Municipal Court. Judge Michels and Judge Ramon Reid, a judge in Toppenish Municipal Court, agreed to substitute for one another at no charge to Sunnyside or Toppenish, when either judge was unavailable to preside. The agreement saved money for both communities, as neither could afford to pay judges pro tempore. In 1991, Judge Michels bid for and won the contract to become the Toppenish public defender. As of 1996, Judge Michels received $75 for each person he represented as public defender.

The case before the court began with an anonymous complaint against Judge Michels and Judge Reid which was filed with the Commission on March 5, 1998. The complaint alleged Judge Michels was acting as judge over defendants who were his clients. The second complaint was lodged by Vernon Holden on December 30, 1998. In his complaint, Mr. Holden reported that, over his objection, Judge Michels served as his court appointed attorney after he had presided as judge over a previous case in which he was the defendant.

In early January 2000, the Commission notified Judge Michels it was initiating proceedings to investigate possible violations of the Judicial Canons prohibiting a judge from presiding over cases in which he has served as counsel or representing a party whom he had previously presided over as judge. At this time, Judge Michels denied any wrongdoing and claimed the complaints lodged against him were a political vendetta in response to his opposing the closure of the lower Yakima valley district courts in 1997. The Commission investigation continued until June 6, 2001. During the investigation it was discovered that between 1998 and 2001, Judge Michels presided as judge pro tempore in Toppenish Municipal Court over numerous criminal defendants whom he had also represented as a lawyer. The investigation also revealed that Judge Michels commonly accepted guilty pleas without advising the defendants of the elements of the crime or obtaining proper written plea statements per CrRLJ 4.2. The Commission informed Judge Michels of the findings at the conclusion of the investigation. Judge Michels again denied any wrongdoing.

On August 27, 2001, the Commission filed its statement of charges alleging Judge Michels had violated Canons 1, 2(A), 3(A)(1), 3(D), 5(C)(1), and Application section (A)(2)(b) preceding Canon 1 of the CJC. Judge Michels and disciplinary counsel then agreed to stipulate to a letter of reprimand, subject to approval by the Commission. After reviewing the proposed stipulation and facts surrounding the case, the Commission rejected the stipulation and advised the parties that censure and a 90-day suspension were appropriate. Judge Michels disagreed with the Commission's position, and the matter proceeded to a hearing before the Commission.

On October 25, 2001, Judge Michels filed his answer to the statement of charges in which he denied the conduct leading to the charges, and alleged that the conduct described in the charges did not violate the Canons. On December 6, 2001, Judge Michels again denied each of the 74 requests for admission by disciplinary counsel. During his deposition six days later, when faced with the record, he admitted to all the requests for admission he had previously denied. Judge Michels later stipulated to all the facts as stated in the amended statement of charges. Although he admitted the judicial canons require a judge to disqualify himself if he has previously served as counsel for a defendant, and that he would never serve in dual roles again, Judge Michels continued to claim it was appropriate to pass judgment over a defendant once he had been dismissed as counsel.

At the hearing before the Commission in April 2002, documentary evidence was presented which showed 12 cases in which Judge Michels served as defense counsel and judge for the same defendant, and 8 cases in which he failed to ensure a defendant submitting a guilty plea was informed of the elements of the crimes for which they were being charged. Judge Michels responded by stating that he now knew what he had done was wrong, but he believed at the time the Canons allowed him to act as both judge and lawyer if the defendant agreed to it. He additionally maintained that as judge pro tempore he had no responsibility for the faulty guilty plea forms of another jurisdiction.

The Commission ultimately found that Judge Michels' failure to abide by Canons 1, 2(A), 3(A)(1), and 3(D)(1) deprived defendants of their constitutional rights to representation and to knowingly and intelligently enter guilty pleas. In light of these serious violations, the Commission recommended censure and a 120-day suspension from the bench without pay. Judge Michels claims the sanctions are excessive and seeks a lesser punishment than recommended by the Commission.

ANALYSIS

At issue is whether censure and a 120-day suspension without pay are the appropriate disciplinary sanctions for a part-time judge who accepted guilty pleas from defendants whom he represented as a public defender, and who accepted guilty pleas without obtaining proper written plea statement due to defective plea forms supplied by the court he was temporarily serving. Specifically, we must determine the appropriate sanctions for a judge who has violated Canons 1, 2(A), 3(A)(1), and 3(D)(1) of the CJC. Additionally, Judge Michels claims the Commission violated his due process rights by failing to file the charges in a timely manner and that disciplinary counsel committed prosecutorial misconduct during the hearing.

The Commission bears the burden of proving all alleged ethical violations by clear, cogent, and convincing evidence. *In re Disciplinary Proceeding Against Sanders,* 135 Wash.2d 175, 181, 955 P.2d 369 (1998). The court reviews the Commission's decisions de novo. *Sanders,* 135

Wash.2d at 181, 955 P.2d 369. In determining the appropriate punishment, the court gives "serious consideration" to the Commission's recommendations. *In re Disciplinary Proceeding Against Ritchie,* 123 Wash.2d 725, 731, 870 P.2d 967 (1994). "The Supreme Court may impose the sanction recommended by the commission, or any other sanction that the Supreme Court deems proper." DRJ 9(c).

Judge Michels and the Commission agree there is clear, cogent, and convincing evidence that he presided over cases in which he had previously served as defense counsel, that he improperly accepted guilty pleas and in doing so, violated several judicial Canons. The question then becomes what are the appropriate sanctions for such actions.

We have adopted the following list of factors which are to be considered when imposing sanctions:

> (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

In re Disciplinary Proceeding Against Deming, 108 Wash.2d 82, 119-20, 736 P.2d 639 (1987).

The dissent improperly shifts the focus of the analysis onto the conduct of the Commission and speculates that the Commission's delay contributed to the continued acts of misconduct. If the delay had prejudiced Judge Michels in some way or allowed additional misconduct to occur thereby increasing the seriousness of this case, certainly that would be the basis for mitigating the sanction. Judge Michels ultimately stipulated to the misconduct which negates any claim of prejudice, and the record does not support the speculation of the dissent.

More troubling about the focus of the dissent's analysis is that it minimizes the effect of the misconduct on Judge Michel's clients. Every person charged with a crime possesses certain constitutional and due process rights. Most fundamental of these rights include the right to an attorney and the right to be advised of your rights in a way to be able to make informed decisions regarding your case. Judge Michels agrees that his actions in this case deprived his clients of their rights. Part of the focus of the analysis of the appropriate sanction for this misconduct centers on the actions which deprived individuals of their rights.

We have established that we will not and cannot tolerate any actions that do not comply with fundamental principles of due process. No shortcuts exist and any judicial officer, be he or she part-time, pro tem., or full-time must adhere to these principles in order that individuals who are charged with crimes are afforded the constitutional protections they are entitled to.

A. *Whether the judge's misconduct was isolated or pattern of conduct*

As evidenced by the record and the stipulated facts, Judge Michels' conduct was not an isolated event but rather a pattern. The Commission found 12 cases in a two and one-half year period, August 1998 to February 2001, in which Judge Michels deprived defendants of their constitutional rights by acting as both judge and defense counsel, and eight instances where he failed to use proper guilty plea forms. Judge Michels does not dispute these acts occurred repeatedly over the two and one-half year period.

B. *The nature, extent, and frequency of the conduct*

As the record indicates, Judge Michels served as Toppenish Municipal Court judge pro tempore and Toppenish public defender for a period of 10 years. Judge Michels' choice to act in dual roles in the same court forced his low-income clients to choose between having representation or getting out of jail. An example of this is shown in *City of Toppenish v. Santos Rivas,* Nos. C00006564, C00006565, C00006566, (Toppenish Municipal Court September 13, 1999). Judge Michels was appointed as attorney for Rivas on August 17, 1999. Less than one month later, on September 13, 1999, Judge Michels presided over a hearing in which he entered findings of guilt on two counts in each case and sentenced Rivas to 540 days, with all but 12 suspended, and fined Rivas $4,560, with $2,300 suspended. Rivas had been in jail for two days and had been unsuccessful in contacting Michels, his lawyer. When he arrived in court he found his lawyer was now his judge. A transcript of the Rivas case was admitted during the hearing before the Commission. It shows that Rivas was unsure of what his rights and status before the court were and was unsure about seeking advice from Judge Michels, who was his attorney of record. Judge Michels, while sitting as judge, essentially talked Rivas into firing him as his attorney and pleading guilty to all the charges. If Rivas did not follow Judge Michels' recommendation, he would have gone back to jail until the appointed judge of Toppenish Municipal Court could preside, possibly up to two weeks.[1] At no time did Judge Michels offer Rivas the alternative of appointment of new counsel or remind Rivas of his right to have counsel present. Rather, Judge Michels pressed Rivas to proceed without a lawyer or go back to jail. The Commission uncovered 12 such cases. Judge Michels' only explanation of his conduct was that it was his impression that once he was dismissed as defense counsel he could serve as judge and sentence his former clients.

The United States Supreme Court has made it clear that a fundamental principle of our criminal justice system is that counsel must be provided for individuals who cannot afford their own. *Gideon v. Wainwright,* 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). *Gideon* dealt with a state court's refusal to appoint counsel for an indigent accused of a noncapital felony. We recognized this when holding the right to counsel shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of whether they are felonies or misdemeanors. *McInturf v. Horton,* 85 Wash.2d 704, 705, 538 P.2d 499 (1975); CrR 3.1(a). A criminal defense attorney, whether appointed or retained, has a duty to zealously and diligently defend his or her client. This includes openly and honestly communicating with the client, investigating the circumstances surrounding the charges, filing motions, interviewing and subpoenaing witnesses, and preparing a defense. Most importantly, the attorney needs to make sure the client is properly advised of his or her rights when entering a plea of guilty. In doing this, the attorney needs to make sure that a plea is entered knowingly and voluntarily and that the defendant is aware of any rights he or she is giving up. Judge Michels denied defendants this right when he forced them to choose between their right to counsel or extra jail time. It is the job of a public defender to protect the rights of his or her clients, just as it is the responsibility of the judge to see that justice is carried out. The fact Judge Michels disregarded both duties is a serious offense and calls for a stern response.

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[1] Presumably at that time Michels would be representing Rivas.

With respect to the faulty guilty plea forms, we analyzed this exact issue in a similar setting in *In re Disciplinary Proceeding Against Hammermaster,* 139 Wash.2d 211, 985 P.2d 924 (1999). In *Hammermaster,* we recognized that all courts must provide equal justice, regardless of size and situation, and that short cuts in due process are not tolerated. We further reiterated the principle that a judge has a duty to ensure that guilty pleas are knowingly, voluntarily, and intelligently made. This is also true of a court-appointed attorney or public defender. This ensures that defendants are apprised of the essential elements of the crime and the range of punishment they may receive before entering a plea. This standard applies to regular judges as well as pro tem. judges. When a lawyer is sitting as a judge, he or she has an obligation to comply with the law regardless of whether he or she is full-time, part-time, or pro tem. Under the Canons, the judge's duty is to be faithful to the law and maintain judicial and professional competence. The fact these actions occurred in a rural setting is no defense. Nor does it matter that this occurred while Judge Michels was acting as a pro tempore judge in another jurisdiction. Short cuts around constitutional and statutory requirements and other conditions of due process are unacceptable and are not tolerated in any court by any judicial officer. It was Judge Michels' independent responsibility as judge to ensure that the forms were correct. It is ultimately the duty of the judge to make sure the guilty plea forms are correct, in order to ensure each defendant is aware of his or her rights and that these rights are protected. Judge Michels failed in this duty.

C. *Whether the conduct occurred in the courtroom, whether the judge was acting in his official capacity, the effect the misconduct has upon the integrity and respect of the judiciary*

Both parties agree that all of the conduct in question occurred while Judge Michels was serving as judge pro tempore in Toppenish. A judge pro tempore is subject to the same standards as a regular judge. *In re Disciplinary Proceeding Against Niemi,* 117 Wash.2d 817, 820 P.2d 41 (1991). The Code of Judicial Conduct requires judges to disqualify themselves in any proceeding in which their impartiality may reasonably be questioned. Canon 3(D)(1)(b) requires the same must be done if the judge previously served as a lawyer. Judicial integrity is sacrificed if the canon is violated and the appearance of fairness is ignored.

Judge Michels' conduct strikes at the heart of principles on which our system is based. By repeatedly presiding as judge over his current or former clients whom he served as a public defender, Judge Michels violated the defendants' basic constitutional due process rights. Courts of limited jurisdiction serve as the window to the judicial branch for many people who do not normally have contact with the judicial system. The fact that each time Judge Michels took the bench in Toppenish and announced that he would try to accommodate defendants who were his clients casts serious doubt on the public perception of the judiciary. Further, when Judge Michels made his clients choose between their right to counsel and their freedom, he disregarded the very rights he is sworn to protect as a judge and as a lawyer.

D. *Whether the judge has acknowledged that the acts occurred*

While Judge Michels did deny any wrongdoing for the majority of the investigation, he did admit to the charges against him during his deposition.

E. *Whether the judge has made an effort to change or modify his conduct.*

When the Commission filed its statement of charges in August 2001, Judge Michels resigned from his position as judge pro tempore in Toppenish and testified that the faulty guilty plea forms had been remedied to be in compliance with the law. However, the Commission notified Judge Michels of the nature of the allegations on January 11, 2000, and he continued to pass judgment over his former clients, continually denying he was doing anything wrong. The dissent's argument that Judge Michels would have stopped had the charges been filed earlier is not supported by the record in this case. Contrary to the dissent's assertion, we find no support in the record establishing that Judge Michels made any effort to change or modify his conduct at the time he was initially made aware of the allegations.

F. *Length of service on the bench.*

Judge Michels has been a municipal court judge in Sunnyside since 1986 and had served as judge pro tempore in Toppenish for the majority of the past 16 years. During that time, we released our decision in *Hammermaster* and other cases affecting the judiciary and judicial duties. Any experienced jurist, like Judge Michels, is required to be well versed in the laws of Washington, the CJC, and all legal requirements. The fact that Judge Michels failed to keep current on the status of the law in spite of his years of service on the bench is troublesome. Sixteen years is a considerable amount of time to sit on the bench. Judge Michels owed it to the community where he served to abide by the laws of Washington, the rules outlined by this court, and our state constitution.

G. *Whether there have been prior complaints about the judge*

Judge Michels had one prior complaint against him which had no bearing on our disposition.

H. *The extent to which the judge exploited his position to satisfy his personal desires*

Judge Michels served as judge pro tempore for Toppenish without compensation. While he and Judge Reid did have an agreement to substitute for each other, the motivation behind Judge Michels' actions was not a desire to promote his well-being. While Judge Michels' intentions may have, in his mind, been honorable and were intended to serve his clients by expediting their release from jail, denying those clients their constitutional rights is unacceptable.

SANCTIONS

A careful analysis of the pattern of conduct according to the factors above supports the Commission's recommendation of censure and suspension of Judge Michels. The protection of due process rights for criminal defendants requires strict compliance with the Canons of Judicial Conduct. Repeated violations are serious and warrant sanctions.

A majority of the Commission found Judge Michels in violation of Canons 1, 2(A), 3(A)(1), and 3(D)(1) and ordered censure, a 120-day suspension without pay, and attendance at a judicial education class. We find no reason for a departure from the Commission's recommendation. Judge Michels violated the due process rights of each individual when he acted as both judge and attorney. Improperly accepting guilty pleas also denied defendants their rights.

In *Hammermaster,* the violations and misconduct were similar to this situation. Faulty guilty plea forms were used, and we held that the violation deprived defendants of their due process rights. We held that this type of action was unacceptable and a violation of Canon 3(A)(1). Judge Hammermaster was ultimately censured, suspended for six months, and ordered to take a corrective course. The Commission properly held that Judge Michels' violations of the Canons warranted suspension, and we agree.

Judge Michels agreed that the violations of the Canons occurred. Therefore, any claim that misconduct or delay affected the Commission's determination fails because no prejudice can be shown. While the dissent points out that it took nearly two years for the Commission to notify Judge Michels of the allegations against him, the record reflects that, after Judge Michels received notification of his possible violations of the Canons, he did nothing to prevent further violations. Rather, he continued to act in a dual role in *City of Toppenish v. Collette R. Patrick,* No. C00007555 (Toppenish Municipal Court February 20, 2001) and *City of Toppenish v. Juan A. Salcedo,* No. C00003683 (Toppenish Municipal Court February 22, 2001). And while the Commission may have acted slower than normal, the bulk of the cases (seven) dealing with Judge Michels acting as judge over his former clients occurred between August 23, 1998 and January 27, 1999, a period of five months. During that period the Commission received its first complaint from an identifiable client of Judge Michels, Vernon Holden. This time period is not unreasonable in this case. Judge Michels has not established that any delay contributed to the additional acts of misconduct or merit a reduced sanction. Further, our review is de novo and our analysis factors out any claim of misconduct or delay, even if we were to find any existed. We find no prejudice to Judge Michels that affects our determination.

CONCLUSION

Our legal system is based on the foundation that an independent, unbiased, and competent judiciary will interpret and apply the laws that govern us. This is paramount to the American concept of justice and fairness. Central to our system is the belief that judges will respect and honor their office and the laws they are sworn to protect. If judges fail to follow the law, in turn, the system fails to protect the people.

The rights of the poor and indigent are the rights that often need the most protection. Each county or city operating a criminal court holds the responsibility of adopting certain standards for the delivery of public defense services, with the most basic right being that counsel shall be provided.[2] The fact that this was side-stepped by Judge Michels and the Toppenish Municipal Court is most troubling. Disregarding our most basic and important principles weakens the legal system as a whole. In light of this, we again find it necessary to reiterate that this court will not tolerate short cuts to due process. In the past few years we have been confronted with this problem on more than one occasion. This court has the authority to see that justice is achieved in all courts in this state. When justice fails at any level, it is our duty to remedy the situation in the most appropriate manner.

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[2] RCW 10.101.030 further outlines the standards a county or city operating a criminal court shall incorporate into a public defender contract or office. The standards include:

"[c]ompensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination."

Judge Michels violated Canons 1, 2(A), 3(A)(1), and 3(D)(1), and denied numerous defendants their constitutional rights.[3] His actions warrant suspension. Therefore, we order censure, suspension without pay for 120 days, and attendance of a judicial education approved by the Commission or the State Judicial College.

ALEXANDER, C.J., and MADSEN, IRELAND, BRIDGE, CHAMBERS, OWENS, and FAIRHURST, JJ., concur.

SANDERS, J. (dissenting).

That Judge Michels engaged in two systemic violations of the Code of Judicial Conduct is not disputed: (1) the judge failed to disqualify himself in matters where he currently, or previously, acted as an attorney contrary to CJC Canon 3(D)(1)(b); and (2) he utilized guilty plea forms which failed to fully inform defendants of their rights contrary to CJC Canon 2(A) as well as other ethical requirements. I dissent, however, because our majority fails to properly apply the *Deming*[1] factors and has deferred to the Judicial Conduct Commission's recommended 120-day suspension without pay absent meaningful analysis of the methods and procedures employed by the Judicial Conduct Commission to reach that result.

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[3] All of the misconduct present it this case was stipulated to by both the Commission and Judge Michels. We focus the majority of our discussion on the dual representation charges. While the dissent analyzes the impact of the improper guilty plea forms, it should be noted that those violations neither add nor subtract from the appropriate sanction levied against Judge Michels, even though it is agreed that they occurred.

[1] *In re Disciplinary Proceeding Against Deming,* 108 Wash.2d 82, 119-20, 736 P.2d 639 (1987).

First, by way of general observation, I note that there is no suggestion in this record that Judge Steven Michels is anything other than an honorable man who has attempted, at all times, to fulfill his duties as a judicial officer in good faith and, in many ways, with distinction.[2] The ethical violations at issue here resulted from ignorance, not malevolence. More fundamentally, they were understandable, yet still not pardonable, attempts to accommodate systemic flaws of which the judge was not fully cognizant at the time. For example he attempted to reconcile his dual role as an appointed defense counsel and a pro tem district court judge in Toppenish by attempting to avoid presiding over his own clients and/or inviting them to somehow waive the conflict. Similarly, Judge Michels utilized a defective plea form not of his making and without realization of its defects until it was brought to his attention.

As persuasively brought forth in the Amicus Brief of the American Civil Liberties Union of Washington (ACLU), these two systemic problems are not trifling matters but go to the heart of the judicial system. *Id.* at

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[2] The City of Sunnyside has only praise for Judge Michels, stating that his "demeanor on the bench is beyond reproach" and that his "record on the bench has been excellent." Br. of Amicus Curiae City of Sunnyside at 5, 7-8. The City Council of Sunnyside also passed resolution No.2002-8 on January 21, 2002, giving its full support to Judge Michels. *Id.* at Appendix.

3-19. However, I also agree with the ACLU that recognition of the gravity of the problem does not necessarily dictate the severity of the sanction to be applied against the judge. Here I note as soon as the Judicial Conduct Commission – most belatedly – brought its initial and amended statement of charges respectively, Judge Michels corrected his actions by resigning as pro tem. judge in Toppenish and abandoned his use of the defective guilty plea form immediately upon first notification of the problem.

Judge Michels did, however, make a mistake when he failed to comply with the Code of Judicial Conduct, and that mistake must be appropriately sanctioned after a full and careful analysis of all the circumstances.

First and foremost, I feel constrained to comment on the conduct of the Judicial Conduct Commission itself. The initial complaint regarding failure to recuse from hearing cases involving his own clients was filed on March 5, 1998. However, it was not until January 11, 2000, nearly two years later, that the Commission even notified Judge Michels of the pendency of that complaint, and the Commission waited until August 27, 2001 to file charges, and not until July 15, 2002 did the Commission issue a final order.[3] It was during that interim three year and five month period prior to the initial statement of charges that each and every specifically alleged incident of improper failure to recuse occurred.

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[3] It took the Commission four and one-third years to issue a decision. This delay is unprecedented compared to other cases. *In re Disciplinary Proceeding Against Hammermaster* progressed from complaint to decision in little more than two years. 139 Wash.2d 211, 214, 216, 985 P.2d 924 (1999). For *Deming* a mere six months passed between the start of the investigation and filing of the complaint. 108 Wash.2d at 100, 736 P.2d 639.

When the majority says that there was no prejudice to the judge for this unconscionable delay, it obviously ignores our pointed language in *In re Disciplinary Proceeding Against Deming,* 108 Wash.2d 82, 100-101, 736 P.2d 639 (1987):

> However, when an allegation of judicial misconduct has been made against a judge, two considerations come into play. *If the allegations have merit as a violation of the Code of Judicial Conduct, they should be speedily investigated and a formal complaint filed.* If the allegations are without merit, they should be speedily dismissed. A judge who is violating the Code of Judicial Conduct should be disciplined as soon as possible so that the inappropriate practice will be stopped. A judge who is unfairly accused has a right to a prompt resolution of the allegations considered under JQCR 5 and to a prompt investigation under JQCR 6. (Emphasis added.)

If the Judicial Conduct Commission had acted promptly in 1998 to file a formal complaint against Judge Michels, I posit it is more than likely, on this record, that Judge Michels would have acted in the same way he did when he ultimately received the statement of charges against him: resign his pro tem judge position. Therefore the Commission not only prejudiced Judge Michels in the way indicated but was ultimately and fundamentally in dereliction of its duty to protect the public by delaying more than three years and five months between receiving a citizen's complaint and filing the initial statement of charges.

A similar criticism finds fertile ground with respect to the Commission's decision not to inform Judge Michels promptly of the use of improper guilty plea forms. Literally thousands of instances relating to these forms could have been avoided had the Commission acted with reasonable dispatch once it was aware of the inaccuracy.[4] A simple phone call to the judge probably could have cured this problem which was not of his making as he in fact did stop using the improper forms upon first notice of a citizen's complaint.[5]

I am also troubled about other aspects of the proceeding against Judge Michels after a statement of charges had been filed against him by the Judicial Conduct Commission but before final resolution of the case.

It appears there was negotiation between the judge and disciplinary counsel regarding a stipulated reprimand (without suspension) which was executed by Judge Michels and disciplinary counsel by September 19, 2001. On October 3, 2001, however, the Commission rejected the stipulation, recommending 90 days' suspension, a sanction unacceptable to Judge Michels. Thereafter the judge moved that members of the Commission who had rejected the stipulation be recused from further proceedings in the case. However in an ironic turn of events, all but one declined to recuse, ultimately sanctioning Judge Michels not 90 days but 120 days. During that interim Judge Michels issued two press releases indicating his displeasure with Commission proceedings against him, which followed earlier press releases issued by the Commission itself, publicizing its unproved case against the "Sunnyside Municipal Judge Steven Michels," notwithstanding the fact that no misconduct was alleged with respect to the deportment of his Sunnyside duties.

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[4] At the hearing before the Commission, Judge Michels opined that the Toppenish District Court used the defective guilty plea form 5,300 times a year. Record of Proceeding (RP) at 83.

[5] Judge Michels alluded that he would have corrected his conduct had he received a simple phone call: "I think the commission maybe should give the judge a call and say, hey, judge, we got a complaint. . . . Why don't you check it out?" RP at 83.

The Commission issued yet another press release after it had finally terminated the proceeding, and on October 7, 2002 the *Seattle Times* published an article attributing statements to an investigating attorney for the Commission which characterized rural courts of limited jurisdiction as "'personal fiefdoms'" of rural judges acting with a "'white heart and an empty head.'" Br. of Commission on Judicial Conduct at App. 2. And the Commission purports to uphold the dignity of the judiciary?

While I question whether the Commission is doing more harm than good to public perceptions of the judiciary through its negative press campaign, I have no question that Judge Michels had every First Amendment right to characterize the Commission proceeding against him as he saw fit in the public media. Any effort to sanction him, or aggravate the penalty against him, for this free speech activity is intolerable. Unfortunately there is good reason to believe the Commission engaged in retribution for exactly this reason as it states in its written opinion, in a rather backhanded fashion, that the newspaper articles were not considered as an aggravating factor but rather as an indication that a mitigating factor (that he acknowledged his acts) was absent.[6]

On this record it appears from the outset that Judge Michels generally admitted the "acts" did in fact occur (*Deming* factor (e), *Deming,* 108 Wash.2d at 120, 736 P.2d 639), although at times he disputed the legal consequence of those actions, leading Judge Schultheis in dissent from the commission decision to state:

> The majority finds fault with the Respondent for denying the allegations raised by the Commission, until shortly before the hearing. I do not agree that the exercise of one's rights, by requiring the Commission to prove the allegations, should be considered an aggravating factor when determining what sanctions, if any, should be imposed.

I Commission Papers at tab 91 (dissenting opinion at 1).

Whether one considers press reports chastising the Commission as an aggravating factor, or simply evidence disproving a mitigating one, seems little more than semantics. Either way the sanction is either increased or not mitigated when it should have been.

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[6] First, the Commission did not consider Respondent's denial of the allegations of the Statement of Charges to be an aggravating factor. Whether the judge has acknowledged or recognized that the acts occurred may be a mitigating factor. The Commission commented on the manner in which respondent conducted his defense, including a blanket denial of requests for admissions that he later admitted in full, and *newspaper statements* as set forth above, only in the context of whether this mitigating factor was present.

I Commission Papers at tab 91 (commission decision at 18) (emphasis added).

Then there remains the question of what guidance, if any, *In re Disciplinary Proceeding Against Hammermaster,* 139 Wash.2d 211, 985 P.2d 924 (1999) lends to this case? The distinction is well set forth in the City of Sunnyside amicus curiae brief. It observes virtually the only commonality between these cases is the use of an improper guilty plea form. Unlike Judge Michels, the judge in the prior proceeding was also charged with abusing his authority and exhibiting a disrespectful and undignified demeanor,

> by threatening defendants with life imprisonment or indefinite jail sentences; routinely ordering Spanish-speaking defendants to enroll in English courses, become citizens or leave the country; issuing or threatening to issue orders beyond his legal authority as a municipal court judge; and making statements or issuing orders that denigrate unmarried individuals who lived together.

Hammermaster, 139 Wash.2d at 215, 985 P.2d 924. Judge Hammermaster also conducted trials in absentia. *Id.*

No, I do not think the case against Judge Michels has much to do with the decision in *Hammermaster.*

In terms of appropriate sanction against Judge Michels, what is to be done? Considering the systemic nature of the problem which was corrected immediately upon filing of the statement of charges, considering his complete absence of selfish motive or malicious intent, considering that Judge Reid (the regular judge of the

Toppenish Municipal Court who had primary responsibility for developing the defective guilty plea form) was given an admonition, considering the anguish[7] that Judge Michels has already sustained during the course of this unduly protracted litigation,[8] I would reduce the sanction to an admonition.

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[7] Judge Michels awoke on January 14, 2002 at 3:00 A.M. with shortness of breath. He was admitted to Sunnyside Hospital shortly thereafter and diagnosed with congestive heart failure, the cause of which appeared to be stress related. Aff. of Alayne Michels at I Commission Papers at tab 55. Judge Michels wrote in his response to the Commission that for the last year and a half he woke up at 3:00 A.M. worrying about the Commission's actions. II Commission Papers at tab 43.

[8] Initial complaint filed March 5, 1998, final decision of the Commission July 15, 2002, decision by Washington Supreme Court, September 4, 2003.

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In re the Matter of The HONORABLE STEVEN MICHELS Judge Pro Tempore, Toppenish Municipal Court and Judge, Sunnyside Municipal Court Yakima County, Washington Respondent.	No. 2969-F-92 **COMMISSION DECISION** (Filed Jul. 15, 2002)

On April 26, 2002, this matter came on for a fact-finding hearing before the Commission on Judicial Conduct sitting in Yakima, Washington. The Commission members participating as the fact-finding panel for this matter were: Sherry Appleton; Vivian Caver; Harold D. Clarke III; Antonio P. Cube, Sr.; Gregory R. Dallaire; Lorraine Lee; John A. Schultheis; Todd K. Whitrock; and Dale B. Ramerman, Presiding Officer.

Ernest D. Greco of Spokane appeared as Disciplinary Counsel; Respondent was present and represented by Lou V. DeLorie, Jr.

The Commission heard and considered the testimony of witnesses, the stipulation of the parties regarding admissions, the exhibits admitted into evidence, and the briefs and arguments of counsel.

By an order filed February 7, 2002, in a ruling on motions for summary judgment and dismissal brought by

Disciplinary Counsel and the Respondent, the Commission dismissed certain affirmative defenses as a matter of law.

At the commencement of the fact-finding hearing, the Commission accepted into the record a "Stipulation re: Admissions as to Allegations in Amended Statement of Charges." In addition to stipulating to the admissibility of certain evidence, this stipulation provided that the allegations set forth in paragraphs II.I (a) through(l) and paragraph II.II on page 6, were established by clear, cogent and convincing evidence.

Post-hearing, Respondent moved to strike two portions of the argument of Disciplinary Counsel. The Commission, acting through the presiding officer, struck the portion of the argument referring to a Bar complaint, and denied the balance of the motion.

The burden of proof is on Disciplinary Counsel to prove a violation by clear, cogent and convincing evidence.

Since 1986, Respondent has been an appointed, part-time, municipal court judge in Sunnyside, Washington. For about ten years, until these charges were filed, he also served as the judge pro tempore for the Toppenish Municipal Court. He served in the latter capacity, on a part-time but regular basis without pay, in exchange for similar services by the part-time Toppenish Municipal Court judge in the Sunnyside Municipal Court. During the time period he was sitting as the judge pro tempore in Toppenish, Respondent, as a lawyer in private practice, also held a contract as the part-time Toppenish public defender.

Respondent is charged by an Amended Statement of Charges with two patterns of practice, in his service as the judge pro tempore of the Toppenish Court, that are alleged to constitute violations of the Code of Judicial Conduct. With respect to both alleged patterns of practice, Respondent has stipulated that there is clear, cogent and convincing evidence regarding the conduct giving rise to the charges as set forth in paragraphs II.I (a) through (l) and II.II of the Amended Statement of Charges.

I. FIRST ALLEGED VIOLATION-DUAL ROLE CONDUCT

The first allegation is that Respondent violated Canons 1, 2(A) and 3(D)(1)(b) by presiding as judge in numerous criminal cases in which he also appeared on behalf of the defendant as a lawyer. The record establishes by clear, cogent and convincing evidence that over a three year period of time, in more than twelve cases, Respondent made discretionary decisions while presiding as the judge in cases where he had previously appeared as attorney of record for the defendant.

Canon 3(D)(1) provides in part:

> Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:
>
> . . .
>
> (b) the judge previously served as a lawyer
>
> . . . .

Neither transcripts nor tapes are available for some of the cases cited in the first allegation of the Amended Statement of Charges. But the dockets in each of these cases reflect Respondent was appointed as counsel for the defendant and later acted as judge in the same case. None of the dockets suggest Respondent had withdrawn or been replaced as counsel.

The discretionary actions taken by Respondent in these cases in which he previously served ~~as a lawyer~~ varied. In *Toppenish v. Aileen H. Jimmy*, C00005051, he was appointed counsel for the defendant in August of 1998. About a year later, without having withdrawn as counsel, Respondent, as the judge pro tempore for the Toppenish Municipal Court, cleared a warrant for the arrest of the defendant and ordered the warrant recalled.

In other cases, Respondent's actions as judge where he also was counsel of record for the defendant were even more substantive. For example, in the three cases of *Toppenish v. Santos Rivas,* C00006564, C00006565, and C00006566, Respondent was appointed as attorney for defendant on August 17, 1999. Less than a month later, on September 13, 1999, while sitting as a judge pro tempore on these same cases, Respondent presided at a hearing at which he entered findings of guilt on two counts in each case, sentenced the defendant to a total of 540 days in jail, with all but twelve days suspended, fined defendant $4560 and then suspended $2300 of this amount. Exhibit 7; exhibits 22 and 23.

In the *Rivas* case the defendant, four weeks before his sentencing by Respondent, had qualified for an attorney at public expense, and Respondent Michels was appointed to represent him. On the date of his sentencing, so far as the record reflects, he still qualified for a public defender. The record does not show that Respondent Michels had withdrawn as his attorney of record, and Respondent does not contend he had withdrawn. Rather, Respondent contends he was discharged by the defendant when Respondent appeared as the judge in the case.

The hearing, which ended with Respondent sentencing Mr. Rivas, began as an arraignment of Mr. Rivas on a new charge. Respondent advised the defendant that he was subject to a $1000 fine; asked defendant if he wanted to enter a plea of guilty or not guilty; and inquired whether defendant wished to be represented by an attorney. At that point the defendant raised the issue of other charges that were pending against him:

> *The defendant:* "I'm not sure at this point. Is this all I'm here for?"
>
> *Judge Michels:* "I believe so. Are you being held on something else?"
>
> *The defendant answered in part:* "Uh, you guys don't know, I, I sort of know but I don't really know what, what's going on, what charges or how many, cause I got a number of 'em that, uh, I don't have the paperwork on right now . . . .
>
> *A short time later Judge Michels says:* "These other ones I actually represent you on, so there's nothing I can do on those until Judge Reid gets back and (inaudible)"
>
> *Defendant:* "Well, remember I was trying to get in here and get it over with, get, plead guilty, I told you right here and then they shoved me on out there and I've been, and you said well I'll talk ~~to the jud~~ge and, and I've been in here, but I was ready to plead guilty on all that."
>
> *Judge Michels:* "Do you want to plead guilty on those now?"

Defendant: "I'm just gonna go ahead and plead guilty to everything as soon as possible."

Judge Michels: "Do you wish to proceed without an attorney representing you?"

Defendant: "I'm pleading guilty to everything, get it over with, and, uh, that's . . ."

Judge Michels: "Do you wish to proceed without an attorney:"

Defendant: "Yeh, I just want to get it over with."

Judge Michels: "I was appointed to represent you. Do you mind if I (inaudible) listening to this as judge?"

Defendant: "I don't mind, uh-uh, I just, I've been in here since the 11th. I've been trying to talk to somebody, trying to get to you, can't get on the phone to you so, uh, like I said since the 11th I've mailed in kites, filed, uh, filed some legal documents and I just want to get it out of the way."

Judge Michels: "Do you wish to proceed without being represented by an attorney?"

Defendant: "Right, a plea of guilty on everything."

Exhibit 7.

This dialog between Respondent and the defendant Rivas raises several serious concerns for the Commission. Rivas had been in jail for two days and had been attempting to contact his lawyer, Respondent Michels. When he did get into court, his lawyer was presiding as the judge. At that point the judge repeatedly pressed him about whether he wanted to proceed without a lawyer, or go back to jail and wait indefinitely for another judge. Respondent did not offer the alternative of appointing another lawyer for him, or remind him of his right to counsel. At no point does the record reflect Respondent asking the prosecutor whether he objects to Respondent proceeding. Indeed, the prosecutor probably was not present. The record does not reflect the prosecutor was there.

The Code of Judicial Conduct prohibits a judge from acting as a judge in a case where the judge previously appeared as a lawyer. Canon 3(D)(1)(b). Although this prohibition is worded in the terms "should disqualify," the obligation of a judge to disqualify when he or she has previously acted as a lawyer in the case is mandatory. *Judicial Conduct and Ethics*, § 4.16 (3rd ed, 2000). Thus, while under 3(E) other bases for disqualification such as having a economic interest in the case, may in some circumstances be waived as a basis for disqualification, the disqualification based on previously having acted as an attorney is not listed as a conflict that can be waived.

The Application section of the Code makes all of the Code of Judicial Conduct applicable to all judges, with certain narrow exceptions for part-time judges (judges who serve on a continuing or periodic basis but who are permitted to devote time to some other profession) and for pro tempore judges (persons appointed to act temporarily as judges). The Code sections Respondent is alleged to have violated apply to both part-time judges and pro tempore judges.

In each of the matters cited in the Section II.I of the Amended Statement of Charges, Respondent, as he has admitted, violated the Code of Judicial Conduct by acting as judge in cases where he had previously acted as counsel. By acting as both lawyer and judge in the same case, he violated Canon 1 by failing to maintain and enforce high standards of judicial conduct; he violated Canon 2(a) by failing to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and he violated Canon 3(D) by failing to disqualify himself in cases where he had previously served as a lawyer.

II. SECOND ALLEGED VIOLATION-IMPROPER GUILTY PLEAS

The second allegation is that Respondent violated the Code of Judicial Conduct Canons 1, 2(A) and 3(A)(1) by engaging in a pattern and practice of accepting guilty pleas without obtaining proper written plea statements from the defendants. Eight cases heard by Respondent as a judge pro tempore in Toppenish are cited. Respondent admits these events happened and that they constituted violations of the requirements for a guilty plea and violations of the Code of Judicial Conduct.

Courts of Limited Jurisdiction Criminal Rule (CrRLJ) 4.2 requires that when a defendant pleads guilty, the defendant shall sign a guilty plea form that substantially complies with the plea form set forth in the rule. The plea form used by Respondent in the Toppenish Municipal Court, contrary to the requirements of the court rule, did not advise defendants of their right to be represented by a lawyer and to be represented at public expense if they cannot afford a lawyer, of the elements of the crime charged, of their rights to a speedy and public trial before an impartial jury, of their right to remain silent and not testify against themselves, of their right to testify and call witnesses to testify, of their right to an appeal, of the prosecuting attorney's recommendation, or of the court's right to assess court costs. Respondent admits that he did not orally advise defendants of these rights. Exhibit 1, Deposition of Respondent, page 108. Also in violation of the rule, the plea form used by Respondent in Toppenish did not include defendant's statement of what he or she had done that makes them guilty and did not contain representations by the defendant that they were acting freely and voluntarily without threats or promises. In some of the pleas taken by Respondent, the blanks for the minimum and maximum terms that could be imposed were omitted; in several cases no written plea form was used. The plea forms used by Respondent did not list the elements of the crime, and Respondent did not orally advise defendants of the elements. Exhibit 1, Deposition of Respondent, page 100; 107. These omissions were substantive deviations from the requirements of the court rule. Even if Respondent orally advised defendants of some of the information and rights required in the form, this would not make up for omissions from the plea forms. To ensure pleas of guilty are both knowing and voluntary, the rule requires the defendant to acknowledge in writing that prior to the hearing the defendant has either read, or had the plea read to him.

The content of the form required by CrRLJ 4.29(g) is dictated by the constitutional requirement that guilty pleas be knowingly, intelligently and voluntarily made. *In re Hammermaster*, 139 Wn.2d 211, 235-236 (1999). A judge has a duty to ensure that a guilty plea is constitutionally valid. *Boykin v. Alabama*, 395 U.S. 238 (1969).

The court in *Hammermaster* held that denying a defendant basic due process in taking guilty pleas is a serious violation of Canon 3(A)(1).

Respondent's conduct in taking guilty pleas as the pro tempore judge in the Toppenish Municipal Court constituted a pattern and practice of conduct that violated defendants' constitutional rights and violated the Code of Judicial Conduct. Specifically, this conduct violated Canon 1 by failing to enforce high standards of judicial conduct, violated Canon 2(A) by failing to act to promote public confidence in the integrity and impartiality of the judiciary, and violated Canon 3(A)(1) by failing to be faithful to the law and maintain professional competence in it.

III. SANCTIONS FOR VIOLATIONS

Under both the Rules of the Commission and case law, there are ten non-exclusive factors the Commission must consider in determining the appropriate sanction for a violation of the Code of Judicial Conduct.

1. Whether the conduct was an isolated event or a part of a pattern of conduct.

With respect to both alleged violations, there were many instances where violations occurred. The violations were not isolated incidents, but rather were recurring events that were predictable.

Respondent contends regarding the allegation that he appeared as a lawyer and acted as a judge in the same case, that he tried to avoid this situation by instructing the clerk, when he was scheduled to act as a judge pro tempore, to reschedule cases where he had appeared as a lawyer to a time when the regular judge would be present, and that these violations occurred when defendants he represented would appear unexpectedly on the calendar because they had been taken into custody.

But the record establishes that defendants Respondent represented who were not in custody also appeared before him when he was functioning as judge. Respondent testified in his deposition that, notwithstanding his request that his clients not be put on calendars that he would hear as a judge, this sometimes did happen. Exhibit 1, Deposition of Respondent, page 45. He also testified that it was a surprise when one of his clients showed up before him when he was presiding as judge. Transcript of Proceedings, page 69, lines 20-25.

The Commission finds that Respondent knew or should have known that the circumstance presented in these cases was a recurring circumstance that was created by Respondent's decision to both hold the public defender contract and to serve as the judge pro tempore. Even if cases where he was the defendant's lawyer were usually rescheduled, the record shows that regularly his clients appeared before him when he was acting as judge. The proper solution was not to ignore the problem and continue to place defendants in the position of choosing between their right to counsel and their right to a prompt resolution of their cases. Rather, Respondent should have either dropped the public defender contract or stopped serving as the judge pro tempore. By electing to continue to do both, he knew or should have known that he would continue to function as judge in the same cases in which he had already appeared as counsel for the defendant, and that he would continue to violate the Code of Judicial Conduct.

With respect to the guilty plea cases, the Commission can infer from the record that in every case Respondent used a plea form that was not in substantial compliance with the court rules and that he did not properly advise the defendants of the rights they were giving up.

2. The nature, extent, and frequency of the occurrence of the acts of misconduct.

The dual role violations involved a breach of an explicit canon prohibition on numerous occasions. The violation goes to the heart of both the fundamental right to an impartial judiciary, a right of both defendants and the State, and the constitutional right of a defendant in a criminal proceeding to be represented by counsel.

Respondent contends that he was relying on a statute and that he had misread the Code of Judicial Conduct prohibition. This statute, RCW 2.28.030, in subdivision 4 prohibits a person from acting as a judicial officer in a case where he or she has acted as an attorney. The statute goes on to provide:

> In the cases specified in subdivision 3 and 4, the disqualification may be waived by the parties, and except in the Supreme Court and the Court of Appeals, shall be deemed to be waived, unless an application for the change of place of the trial be made as provided by law.

It is the Code of Judicial Conduct, however, not this statute, that governs the ethical conduct of judges. The Supreme Court has the final say on ethical conduct of judges; what it has prohibited by the adoption of the Code of Judicial Conduct, the legislature cannot authorize. The statute relied on was adopted in 1891 and was amended once, in 1971, to add a reference to the Court of Appeals.

The Supreme Court adopted the Code of Judicial Conduct in 1974; the present version of the Code was adopted in 1995. Moreover, the Constitution of Washington was amended in 1980 to create the Commission on Judicial Conduct, giving the Commission authority to determine whether a judge "has violated a rule of judicial conduct." Thus the Constitution adopts the Code of Judicial Conduct by reference. *In re Discipline of Turco*, 137 Wn.2d 227, 238 (1999). Having constitutional stature, the Code of Judicial Conduct necessarily supersedes any statutory provisions.

As for the argument he had misread the Code of Judicial Conduct 3(D)(1), a mistaken belief about the law is not a substantial mitigating factor. Respondent's explanation of his misreading was as follows:

> Q. (By Respondent's Counsel): What about the canons, Canon 3(D)(1)? The way it is presented up there, 3(D)(1) to me looks pretty black and white.
>
> A. And that is black and white. And I think that is correct. However, at the time, I was going ahead and reading a little bit farther in that canon, and the canon goes on to section E. . . . I was looking at section E. which basically says that you can have disclosure and agreement of the parties, of everyone who is there, of the defendant, if there's an attorney, prosecutor, if there's an agreement then you can go ahead and sit as judge even though you may have had a legal relationship with the defendant. So I felt as long as I put it on the record, as long as everyone agreed that that was the thing to do.

Transcript of Proceedings, page 75, line 23 to page 76, line 13.

This is a blatant misreading of 3(E), which provides as follows:

> (E)Remittal of Disqualification. A judge disqualified by the terms of Canon 3(D)(1)(c) or Canon 3(D)(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will subsequently be given.

By listing the subparts to which this exception applies, the exception implicitly does not apply to the subparts not listed, including the subpart at issue in this case. Moreover, there is no evidence in the transcripts that are available that Respondent attempted to get the consent of both the defendant and the prosecutor. In the *Rivas* case, for example, the record does not reflect that Respondent obtained the consent of the prosecutor. Third, for this exception to apply, the parties must "independently of the judge's participation" agree in writing or on the record. Defendants were forced by Respondents appearance as a judge on their case to decide between a timely hearing and their right to counsel. They had no opportunity to consider what to do independently of the judge's participation. In *Rivas* Respondent's questioning about whether defendant wanted to proceed without a lawyer was persistent, even though polite. Exhibit 11, Tape of proceedings for 9/13/99.

Finally, the required findings that must be in writing or on the record under Code of Judicial Conduct 3(E) were not made, and obviously have no relevance to the disqualification based on a prior appearance as counsel.

Respondent's contention that he proceeded as he did because he misread Canon 3, is not credible. Rather, it is an excuse presented in an attempt to justify a pattern of conduct that was an obvious violation of the Code of Judicial Conduct.

Another contention of Respondent is that he always announced that if he had represented any of the defendants who were appearing before him, their cases would have to be rescheduled. His statements were not so categorical. For example, in the *Rivas* case, Respondent made the following introductory announcement:

> Some of you who are in the courtroom I represent, or have represented. And, if that's the case, we can do whatever Judge Reid would do were he here, I would try to go ahead and do that. If it creates any type of conflict, I'll have to reset the case so that Judge Reid would hear your case. Don't hesitate to ask me if you have any questions concerning that. I am Judge Steve Michels and Judge Reid is not here today. I am sitting as Judge Pro Tem.

Exhibit 12.

In another case Respondent announced:

> Some of you I represent or have represented in the past. If there's anything I can do on the case, we'll try to do it, otherwise I'll have to reset it for Judge Reid, but we'll take a look. Sometimes you're just here for a hearing or an alcohol

> review or something like that. We can do that, [inaudible] we can do that.

Exhibit 16.

Respondent contends that by going ahead and acting in these cases, he was doing the defendants a favor. Unless he went ahead and ruled as judge on their cases, the defendants would have had to sit in jail until the regular judge returned, which could be several weeks. This is essentially a necessity defense: no other judicial officer was available who could act.

He testified:

> Also, the problem that we kind of run into in sitting like that is we have these rules that we need to follow, but the rules also say that we need to protect the defendant's rights, sitting as a pro tem, we need to defend and protect the defendant's rights. Well, I had people in front of me who would be out of jail if they could be sentenced right then. They were going to have to wait another two weeks for another judge. And I thought that's cruel and unusual punishment for them to have to do that. So what we end up having is really a conflict. We kind of have conflict in what these canons are providing when we have this situation. So that's the problem I was faced with.

Transcript of Proceedings, page 76 line 14 to page 77 line 2.

Necessity has been recognized as a defense in dual role cases. See generally, *Judicial Conduct and Ethics* §4.03. But while the Commission finds that this may have been the immediate motive of Respondent, necessity is neither a defense nor a viable argument in mitigation under the facts of this case. The reason is that the "necessity" was created by Respondent's decision to continue to act both as the public defender and as a pro tem judge. Had he recognized he could not fulfill both rules in a manner consistent with his ethical obligations as a lawyer and as a judge, defendants would not have been faced with choosing between the right to counsel and a timely court process.

Respondent also contends the record reflects he had, in effect, withdrawn as counsel or that the defendants elected to discharge him as counsel and waive their right to counsel. If Respondent had withdrawn, he would have had the duty as a withdrawing attorney to take whatever practical steps he could to protect the client. RPC 1.15(d). At a minimum this would include advising the client of his or her right to a new attorney. Similarly, as a judge with a duty to protect the Constitutional rights of defendants appearing before him, he would have had the duty to advise the defendant that since his or her attorney was withdrawing, the defendant had a right to appointment of new counsel. As the transcript in *Rivas* reflects, Mr. Rivas wanted to proceed without counsel because he wanted to get out of jail and the first judge he appears before is also his attorney. At this hearing he was not advised of his right to be represented by an attorney, nor was he advised of any other constitutional right. Exhibit 1, Deposition of Respondent, page 69. The defendant in these circumstances stating that he just wanted to go ahead with the hearing is hardly making a knowing and voluntary choice to waive the right to counsel.

Respondent has also contended that all he did in these hearings was continue the cases for the regular judge. Thus, he argues that on sentence compliance hearings, he did what the regular judge would have done, and set them for another hearing. But this is clearly not what Respondent always did, since he also testified he considered whether they were in compliance, and would then set the matter over for another hearing in 30 or 60 days. Transcript of proceedings, page 76 through page 78, line 13. This involved exercising judicial discretion involving defendants Respondent was representing. Respondent repeatedly made discretionary decisions, sometimes involving loss of liberty, for defendants who obviously were deprived of their right to counsel.

Respondent offered the testimony of a witness, the City Attorney for the City of Toppenish, who testified that he had never known Respondent to do something as a judge pro tempore that was inconsistent with what the regular judge would have done. This at best is speculation and even if accurate not a defense.

Finally, in testifying about his acting in a dual capacity, Respondent testified that he never deviated from the prosecutor's recommendations. Transcript of proceedings, page 76, lines 10-12. His point seemed to be that for this reason, the State was not prejudiced or deprived of an impartial judge. But all parties are entitled to an independent, unbiased judge. This defense at best suggests he might have been favoring the State to avoid appearing to favor his own client.

With respect to Respondent's procedure for taking guilty pleas and the forms he used, and specifically the omission of the elements of the crime from the guilty plea forms, Respondent testified that if the elements of the crime were not in the police report, he would not find the defendant guilty, that most of the crimes with which defendants are charged contained in their title the elements of the crime charged. Even if true, this would not show that the defendant understood what the elements of the crime were.

Finally, Respondent testified that everyone thought his plea forms were in substantial compliance. This is not a defense.

3. Whether the misconduct occurred in or out of the courtroom.

In every case, the misconduct occurred in the courtroom in cases where the defendant's liberty was at stake.

4. Whether the misconduct occurred in the judge's official capacity or his private life.

It occurred in his official capacity.

5. Whether the judge has acknowledged or recognized that the acts occurred.

By the time of the hearing Respondent acknowledged that the acts occurred and that he had violated the Code of Judicial Conduct.

In response to the initial statement of allegations, however, Respondent responded in part as follows:

> I categorically deny that I have violated Canons 1, 2A, or 3D. I am insulted that any impropriety has been suggested. I have yet to serve as judge in any proceeding in which I feel my impartiality might reasonably be questioned.
>
> These "allegations" border on the ridiculous. . . .
>
> . . .

> As I have noted, these allegations, even though ridiculous, do take up time and energy. This impedes the judicial system by continually tying up judges' attention, time and energy answering complaints rather than doing their jobs. Continual harassment prevents good judges from being objective. The goal of preserving judicial objectivity and fairness must be the top priority. Your commission is the preserver of that, not the prosecutor for false and improper allegations.

Exhibit 23, pages 2-4.

On June 29, 2001 he again wrote the Commission denying any violation of the Code of Judicial Conduct. He concluded by alleging:

> The only mistake I have made was to publicly criticize the local District Court Judges who closed down the Lower Valley district Courts 3 years ago. One in particular did not like that criticism and it is my contention that he is using your Commission to make huge numbers of false accusations against me and other judges similarly situated. You need to stop this political retaliation or at least protect those of us who are its victims.

Exhibit 22.

During the pendency of the proceedings, Respondent denied requests for admission about his conduct; he later admitted that all of the requests for admission were true. His attorney argued that he was not really familiar with civil practice and discovery. Respondent, however, testified that he did do some "civil litigation in terms of discovery practice and rules regarding discovery practice." Transcript of Proceedings, page 62, lines 15-17.

On November 9, 2001, after the Statement of Charges was served, Respondent stated to the press: "the tapes [of court hearings] clearly explain what happened in the courtroom in each of the cases. I told defendants I couldn't sentence them. They fired me as their attorney and the prosecutors urged me to proceed with sentencing." Exhibit 34.

The record reflects he was discharged because the defendant was faced with substantial additional time in jail if they kept Respondent as their attorney, and there is no evidence the prosecutors urged him to proceed or consented.

6. Whether the judge has evidenced an effort to change or modify his conduct.

By the time of the hearing Respondent had stopped serving as a judge pro tempore in Toppenish.

With respect to the use of improper plea forms, Respondent argues that he was only the pro tempore judge using the forms provided by the appointed judge. The Commission recognizes that this might be a mitigating factor. Although a pro tempore judge must comply with the court rules, it would be unusual for a pro tempore judge to rewrite the forms for a court in which he or she was sitting as a judge pro tempore. But Respondent was also sitting as a judge in his own court, and he sat as a judge pro tempore for about ten years. It also must be noted that the plea forms used by Respondent in his own court in Sunnyside also did not comply with the requirements of the Court rule.

7. The length of service on the bench.

Respondent has served for 15 years as a judge. The length of service may be either a mitigating or exacerbating factor, depending on the nature of the Code violation. In this case, length of service would not be a mitigating factor, in that ignorance of legal requirements and the Code of Judicial Conduct seems to be a defense put forward by Respondent.

8. Whether there have been prior complaints against the judge.

There is one prior public complaint involving an improper political contribution. As a part of the resolution of that complaint, Respondent agreed that he would not again violate the Code of Judicial Conduct.

9. The effect the misconduct has upon the integrity of and respect for the judiciary.

Acting as the judge in a case where one has appeared as a lawyer violates common sense notions of fairness. Respondent's violations in this regard were not obscure. And they were done in court. They raise the question of what the public in the courtroom would think about the judicial process if the defendant's attorney suddenly puts on a robe and becomes the judge. The effect of his violations was to deprive defendants of their constitutional right to representation of counsel, and to undermine public confidence in the judiciary and the court process. Similarly, the cases involving improper guilty plea forms were handled in open court and involved the constitutional rights of defendants. The inadequate form that was not compensated for by an adequate dialog between the court and defendant creates the impression of a mechanical process that undercut the public's respect for the judiciary.

10. The extent to which the judge exploited his position to satisfy personal desires.

Respondent did hold the public defender contract, for which he was paid, and served, as pro tempore judge for the same court. He was not paid for his pro tempore duties because of the arrangement he had with the appointed judge of Toppenish to serve as the pro tempore judge of the Sunnyside Municipal Court when Respondent needed coverage. While there is a degree of self interest that was being served, the Commission cannot find that monetary factors led Respondent to continue to play both roles.

Considering all of the mitigating and exacerbating factors, the Commission must determine the appropriate sanction.

Although the Commission has had cases where a judge sat as a judge on cases where he had previously acted as a lawyer but was no longer doing so, it has not had a case like the present one where the Respondent made discretionary judicial decisions in cases where he was still appearing of record as counsel for the defendant. The sequential cases did not act to deprive the defendant of his right to counsel. Nor was the conflict inherent in the dual role, the conflict that undercuts confidence in the judiciary and court process, so obvious. In the sequential cases, the Commission issued admonishments.

In another case where a part time judge used improper plea forms (the part-time judge in the same court using the same plea forms used by Respondent), the Commission approved a stipulation for an admonishment.

In that case, however, the judge admitted the violation and cooperated with the Commission. Respondent's lack of cooperation and acknowledgment until shortly before the hearing stand in sharp contrast.

As noted, Respondent has a prior violation which was resolved with a stipulation in which Respondent stipulated he would not violate any Code provision in the future.

The Commission concludes that censure and suspension from office for 120 days is required in this case in view of the extent and nature of the violations, exacerbating and mitigating factors, and discipline imposed in other cases.

Censure is appropriate in view of three aspects of this case which are particularly significant with respect to the dual role violation. First, this was a recurring event. Notwithstanding an effort not to schedule Respondent's clients when Respondent was hearing the calendar, Respondent still have his clients appear before him. This happened often enough that Respondent would give a standard announcement about this possibility when he began court. It also happened when Respondent's clients who were in custody on a new charge appeared on the first appearance calendar. How many times over ten years we do not know. But Disciplinary Counsel was able to find and produce evidence of more than twelve cases over three years. Second, Respondent's decision to go forward when the client said he or she just wanted to get it over with, had the effect of depriving the client of legal counsel at a critical juncture of the proceedings when their liberty was at stake. Third, a judge acting in a case where he has represented the defendant, would appear wrong to any court observer, because it brings into question the objectivity of the judge and the court process. The obvious question for a court observer would be, "What kind of court is this?" Respondent's actions in this regard was detrimental to the integrity of the judiciary and undermined public confidence in the judiciary.

Both of the violations reflect Respondent's lack of understanding of the judicial role and duties as well as a lack of understanding of the fundamentals of judicial ethics. Respondent has never attended a course at the national judicial college, which the Commission believes should be done before he resumes judicial duties. Respondent's misunderstanding of or disregard of the requirements of the Code of Judicial Conduct and court rules are so serious that completion of a concentrated education course is the minimum that should be required before he resumes the bench.

[Two points raised by the dissent call for comment. First, the Commission did not consider Respondent's denial of the allegations of the Statement of Charges to be an aggravating factor. Whether the judge has acknowledged or recognized that the acts occurred may be a mitigating factor. The Commission commented on the manner in which respondent conducted his defense, including a blanket denial of requests for admissions that he later admitted in full, and newspaper statements as set forth above, only in the context of whether this mitigating factor was present.

The dissent argues: " . . . the Commission offered to settle this matter by having the Respondent agree to a 90-day suspension, which was refused by the Respondent. I have great difficulty in agreeing with the Commission to now impose a greater suspension merely because the Respondent elected to exercise his right to a hearing." This argument mischaracterizes the position of the Commission, when Respondent and Disciplinary Counsel submitted a proposed stipulated resolution, which the Commission rejected. To facilitate a better understanding on the part of the parties and further discussions about an agreed resolution, the Commission indicated, when it rejected the proposed stipulated resolution, that if proposed stipulated facts were the only facts available to the Commission, then a 90 day suspension would be appropriate. The facts available to the Commission after the fact-finding hearing (including thousands of pages of exhibit plus additional stipulated evidence) were far different from the very limited facts in the proposed stipulation.[1]]

Accordingly, the Commission will censure the Honorable Steven Michels, and will recommend to the Supreme Court that he be suspended without pay for 120 days and that he not be allowed to resume judicial duties in any court until he has completed, at his own expense, a course, approved by the Commission, for judges in limited jurisdiction courts. This course must include, or Judge Michels must separately complete, a course in judicial ethics.

Dated July 15, 2002

/s/ Sherry Appleton
Sherry Appleton

/s/ Lorraine Lee
Lorraine Lee

/s/ Vivian Caver
Vivian Caver

/s/ See dissent
John Schultheis

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[1] Member Lorraine Lee was not available to participate in this bracketed addendum to the majority opinion.

/s/ Harold D. Clarke III
Harold D. Clarke III

/s/ Antonio P. Cube, Sr.
Antonio P. Cube, Sr.

/s/ Gregory Dallaire
Gregory Dallaire

/s/ Dale B. Ramerman
Dale B. Ramerman

/s/ Todd K. Whitrock
Todd K. Whitrock

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

In re the Matter of:

The HONORABLE
STEVEN MICHELS
Judge Pro Tempore,
Toppenish Municipal Court
and Judge, Sunnyside
Municipal Court
Yakima County, Washington

Respondent

No. 2969-F-92

DISSENTING OPINION

Respondent, prior to the hearing conducted April 26, 2002, and during the hearing itself, acknowledged that the actions complained of had occurred, and that he had violated the Code of Judicial Conduct.

The Commission failed to consider that the Respondent was sitting as a Judge Pro Tempore in a poor rural community, without pay, to assist the regular judge who was not available to conduct judicial proceedings. Although the actions that are the subject of this hearing were in violation of the Code of Judicial Conduct, they were not done out of malice, or to benefit the Respondent in any way. They were performed in an effort to assist the neighboring community, and the people who appeared before the Respondent.

The majority finds fault with the Respondent for denying the allegations raised by the Commission, until shortly before the hearing. I do not agree that the exercise of one's rights, by requiring the Commission to prove the allegations, should be considered an aggravating factor when determining what sanctions, if any, should be imposed.

Further, prior to the hearing, the Commission offered to settle this matter by having the Respondent agree to a 90-day suspension, which was refused by the Respondent. I have great difficulty in agreeing with the Commission to now impose a greater suspension merely because the Respondent elected to exercise his right to a hearing.

The Respondent has taken the steps necessary to correct the conduct and actions that are the subject of this Amended Statement of Charges, and I believe that the appropriate discipline should be a censure, without suspension or removal from office.

Accordingly, I dissent.

Dated July 15, 2002

/s/ John A. Schultheis
John A. Schultheis

March 2, 1998

Commission on Judicial Conduct
P. O. Box 1817
Olympia, WA 98507

Received March 5, 1998

To whom it may concern:

Your commission should seriously investigate the incestuous relationship of municipal court judges and attorneys in the Lower Yakima Valley. This issue was the subject of a series of articles in the local newspaper a couple of years ago and has not been cleaned up since. If anything, the problem has become worse.

The two most worst offenders are Judges Steven Michaels from Sunnyside Municipal Court and Judge Ray Reed from Toppenish and Wapato Municipal Courts. These men make a habit of violating drunk driving laws and being involved in conflicts of interest. State laws on deferred prosecution are not followed in either court. It is common for drunk drivers to get more than one case on a deferred prosecution within five years. Other times, these courts grant an "informal 242" for people the law says cannot get two drunk driving cases dismissed. They let lots of drunk drivers get off just because the court won't have to pay for a trial and can get paid money from the drunk driver. Like Richard perez in Wapato court #97-03940 just for one. I know there are lots of other cases just like this one.

Mr. Judge Michaels also judges people who are his clients. I know of one case just last summer. Mr. Michaels was the lawyer for Henry Logie in Toppenish city court case number 2180. Mr. Michaels was a sit-in judge in District Court on May 28, 1997 and gave a deferred prosecution to Mr. Logie. Just a few days later, on June 18 Mr. Michaels was in Toppenish city court as Mr. Logie's lawyer and got

Judge Reed to give him another deferred prosecution on a drunk driving case. I thought someone could only get one deferred prosecution every so many years? Isn't it a conflicting interest for Mr. Judge Michaels to be a lawyer and a judge on the same man's two cases, and then to ask Judge Reed to break the law?

This kind of thing happens all the time. Mr. Michaels was a lawyer for Tyler Klingele in Wapato court. Mr. Michaels got him a deferred prosecution on a drunk driving case in January 1997. Mr. Judge Michaels was a fill-in judge in Toppenish District Court in May 1997 when Mr. Klingele was guilty of open container, having drug paraphanalia, and aid and abet drunk driving. Mr. Judge Michaels had to know Mr. Klingele just got his deferred prosecution and I think the law says when you get a new DWI then it has to be a second offense penalty. Well, Mr. Michaels when he was the judge gave Tyler a big break and only gave him 1 day in jail and a $150 fine when I thought if you got a second drunk driving you had to go to jail for at least one month and pay lots of money. This just does not seem right to me.

Can you do something? It is no wonder there are so many people who get killed driving drunk in this area! Drunk drivers are getting off too easy.

CONFIDENTIAL

State of Washington Received December 30, 1998
Commission on Judicial Conduct
P. O. Box 1817
Olympia, WA 98507
(360) 753-4585 Voice or TDD

COMPLAINT FORM

No. ___

This form is designed to provide the Commission with information required to make an initial evaluation of your complaint, and to begin an investigation of the allegations you make. Please read the accompanying materials on the Commission's function and procedures before you complete this form.

PLEASE TYPE OR PRINT ALL INFORMATION

Your Name Vernon L. Holden

Address [Blacked out]

Toppenish – WA Zip Code [Blacked out]

Daytime telephone [Blacked out]

Evening telephone [Blacked out]

Name of Judge Steven L. Michaels & Ramon Reid

Court Toppenish Municiaple Court

Case Name and Docket Number, if applicable __________

Attorneys involved (if you wish to name them) Steven L. Michaels & Ramon Reid

If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

☐ Yes ☒ No ☐ Not applicable

To Whom it May Concern: 12-28-98

On John Wayne Hull's case against me. Steven Michaels was the judge for him on his case. Then I went to court and Judge Reid appointed Steven Michaels as my court appointed attorney. To me there was a conflict of interest and I voiced my objection to this. The bench trail went on anyway and I was found guilty. There was a second charge brought against me that has went to bench trail. No ruleing has been made at this time on this matter. Before either case was set for trial, I was not given the oppition of a bench trial or jury trial. I was told that it would go to trial period.

I thougth it was going to go in front of a jury. According to the Constitution of the United States I have that right to be judged by a jury of my peers. I wasn't given this right on either case. These people are running rough shod over our constitutional rights and I hope and pray that you will do something about it.

Thank you

Vernon L. Holden

[SEAL]

STATE OF WASHINGTON

COMMISSION ON JUDICIAL CONDUCT

P.O. Box 1817 • Olympia, Washington 98507 •
(360) 753-4585 • FAX (360) 586-2918

January 11, 2000

CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Steven L. Michels
PO Box 195
Sunnyside, WA 98944

RE: 98-2705 and 98-2969

Dear Judge Michels:

This letter is to inform you that the Commission on Judicial Conduct is reviewing the above-referenced complaint and has determined to commence Initial Proceedings. Commission on Judicial Conduct Rules of Procedure (CJCRP) are published in the Washington Court Rules. The Initial Proceedings stage is covered in CJCRP 17(e). In the enclosed annual report, the CJCRP, Code of Judicial Conduct and relevant sections of the Constitution and statute are included as Appendices. I have enclosed a copy of provisions regarding confidentiality of proceedings in the statute and court rule. Also enclosed are recent amendments to the rules effective on September 15, 1999 and on January 15, 2000. As provided by the Commission's rules regarding confidentiality, the existence of this proceeding is confidential at this point.

Please respond to the enclosed Statement of Allegations within twenty-one (21) days after receipt of this notice. Pursuant to CJCRP 17(e), after the time for response to the Statement of Allegations has elapsed, the Commission will consider whether probable cause exists to order the filing of a public Statement of Charges.

Please be advised that any action that may be perceived as retaliation against any witness or other person related to this incident or this proceeding will be viewed with the utmost seriousness. We appreciate your cooperation.

CJCRP 23 provides for stipulations to resolve proceedings at any stage. If you have questions or wish to discuss resolution of this matter, please contact the Commission's Executive Director, David Akana, at this office.

If you have any questions, do not hesitate to call.

Sincerely,

/s/ Molly D. Current
Molly D. Current
Investigative Officer

MDC:jmc
encl

98-2705 & 98-2969

STATEMENT OF ALLEGATIONS

1. It is alleged that the Honorable Stephen Michels, Judge of the Sunnyside Municipal Court and Judge Pro Tem for Toppenish Municipal Court, may be in violation of Canons 1, 2(A) and 3(D) of the Code of Judicial Conduct by participating as both judge and as

counsel in cases involving the same defendants, including but not limited to the cases indicated below.

A. You presided as judge over several cases involving defendants who are current or former clients of yours, including but not limited to defendants Henry W. Logie (Toppenish Municipal Court Case Nos. C00004275 and C00002180; Toppenish District Court Case No.62994); Tyler Marcus Klingele (Wapato Municipal Court Case No. C96-02039; Toppenish District Court Case Nos. 99730 and 503989); and Vernon Holden (Toppenish Municipal Court Case Nos. C00003593, C00004120, C00004122, I00004451, C00004656, C00005688, C00006246 and C00006675).

B. You conducted the trial of a harassment charge against defendant Wayne Hull (Toppenish Municipal Court Case No. C00003594) which arose from the same incident as a harassment charge against Vernon Holden, a client of yours whom you defended on the related harassment charge (Toppenish Municipal Court Case No. C00003593).

[SEAL]

STATE OF WASHINGTON
COMMISSION ON JUDICIAL CONDUCT
P.O. Box 1817 • Olympia, Washington 98507 •
(360) 753-4585 • FAX (360) 586-2918

June 6, 2001

CONFIDENTIAL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Judge Steven L. Michels
PO Box 195
Sunnyside, WA 98944

RE: Complaint Numbers 2705 and 2969

Dear Judge Michels:

This letter is to inform you that the Commission on Judicial Conduct is still reviewing the above referenced complaints and has decided to continue the confidential Initial Proceedings with an Amended Statement of Allegations. Please respond to the enclosed Statement of Allegations within twenty-one days after receipt of this notice. Pursuant to CJCRP 17(e), after the time for response to the Statement of Allegations has elapsed, the Commission will consider whether probable cause exists to order the filing of a public Statement of Charges. Any action that may be perceived as retaliation against any witness or other person related to this proceeding will be viewed with the utmost seriousness.

If you wish to consider concluding this matter through a stipulation, CJCRP 23 provides for such a procedure at any stage of the proceeding. Before doing so, you may want to consult with your attorney. If you or your attorney wish to discuss resolution of this matter please contact David Akana, the Commission's Executive Director, at the above address. if you have questions, please do not hesitate to contact this office.

Sincerely,

/s/ Carol Boothby
Carol Boothby
Investigative Officer

2705 and 2969

AMENDED STATEMENT OF ALLEGATIONS

I. It is alleged that the Honorable Steven Michels, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for the Toppenish and Wapato Municipal Courts, may by the pattern and practice of conduct indicated below, which is not excused by Canon 3(E) of the Code of Judicial Conduct, be in violation of Canons 1, 2(A) and 3(D) and Application section (A)(2)(b) preceding Canon 1.

A. You presided over hearings in several cases in Toppenish Municipal Court in which you also acted as defense counsel, including but not limited to:

   1. *Toppenish v. Henry Logie*, C00002180. You were appointed as defense counsel on or about July 24, 1996 and you presided as judge at review hearings on November 4, 1998 and January 27, 1999.

   2. *Toppenish v. Marshall Hannigan*, C00003677. You were appointed as defense counsel on or about July 7, 1997, and you presided as judge at a sentencing hearing on November 4, 1998.

3. *Toppenish v. Evan C. DoubleRunner*, C00004103. You were appointed as defense counsel on or about October 19, 1997, and you presided as judge at a pretrial hearing on January 27, 1999

4. *Toppenish v. Loenard R. Sam*, C00004182. You were appointed as defense counsel on or about December 16, 1997, and you presided as judge at a pretrial hearing on November 4, 1998.

5. *Toppenish v. Anselmo Cantu*, C00004396. You were appointed as defense counsel on or about July 14, 1998, and you presided as judge at a sentencing hearing on November 4, 1998.

6. *Toppenish v. Jose A. Sandoval*,

    a. C00003683. You were appointed as defense counsel on or about October 21, 1997, and you presided as judge at a review hearing on November 4, 1998.

    b C00003193, C00004164, and C00004165. You were appointed as defense counsel on or about January 8, 1998, and you presided as judge at a review hearing on November 4, 1998.

    c. C00004276, C00004277, C00004278. You were appointed as defense counsel on or about January 29, 1998, and you presided as judge at a review hearing on November 4, 1998.

    d. C00004451. You were appointed as defense counsel on or about March 31, 1998, and you presided as judge at a sentencing hearing on November 4, 1998.

7. *Toppenish v. Jesus R. Gudino*, C00004890. You were appointed as defense counsel on or about September 15, 1998, and you presided as judge at a review hearing on November 4, 1998.

8. *Toppenish v. Aileen H. Jimmy*, C00005051. You were appointed defense counsel on or about August 31, 1998, and you presided as judge at a review hearing on September 13, 1999.

9. *Toppenish v. Victoria J. Napoleon*, C00005212. You were appointed defense counsel on or about November 24, 1998, and you presided as judge at a pretrial hearing on January 27, 1999.

10. *Toppenish v. Danny D. Seelatsee*, C00005620. You were appointed as defense counsel on or about May 6, 2000, and you appeared as judge on an FTA/bail hearing on February 28, 2001.

11. *Toppenish v. Earl N. Patrick*

    a. C00005879. You were appointed as defense counsel on or about September 29, 2000, and you appeared as judge on an FTA/bail hearing on February 20, 2001.

    b. C00005923. You were appointed as defense counsel on or about November 18, 1999, and you appeared as judge on an FTA/bail hearing on February 20, 2001.

12. *Toppenish v. Sara K. George*, C00006009. You were appointed as defense counsel on or about April 20, 2000, and you appeared as judge on an FTA/bail hearing on February 26, 2001.

13. *Toppenish v. Santos Rivas*, C00006564, C00006565, C00006566. You were appointed defense counsel on or about August 16, 1999, and you presided as judge at a guilty plea hearing/non jury trial on January 27, 1999.

14. *Toppenish v. Juan A. Salcedo*, C00006982. You were appointed as defense counsel on or about April 20, 2000, and you appeared as judge on an FTA/bail hearing on February 22, 2001.

15. *Toppenish v. Collette R. Patrick*, C00007555. You were appointed as defense counsel on or about May 25, 2000, and you appeared as judge on an FTA/bail hearing on February 20, 2001.

B. You presided in hearings involving defendants for whom you were still counsel of record in other open cases, including but not limited to:

1. On or about July 24, 1996, you were appointed as defense counsel in *Toppenish v. Henry Logie*, C00002180 (Toppenish Mun. Ct.). On May 27, 1997, you presided as judge in *State v. Henry Logie*, 62994, (Toppenish Dist.Ct.).

2. On or about August 21, 1996, you were appointed as defense counsel in *Wapato v. Tyler Klingele*, C96-02039 (Wapato Mun. Ct.). On May 21, 1997, you presided as judge in 503989 (Toppenish Dist. Ct.); and on May 23, 1997, you presided as judge in *State v. Tyler Klingele*, 99730 (Toppenish Dist. Ct.).

3. You were appointed as defense counsel in *Toppenish v. Vernon Holden*, C00003593 and C00004656 on January 13, 1998 and June 23, 1998, respectively (both Toppenish Mun. Ct.).

On November 10, 1999, you presided as judge in *Toppenish v. Vernon Holden*, C0004122, C00005688, C00006426, and C00006675 (all Toppenish Mun. Ct.).

4. On July 27, 1999, you were appointed as defense counsel in *Toppenish v. Juan E. Almaguer*, C00006441 (Toppenish Mun. Ct.). The same day, presided as judge in *Sunnyside v. Juan E. Almaguer*, 6368 (Sunnyside Mun. Ct.). You continued thereafter to act as attorney in the Toppenish case and as judge in the Sunnyside matter.

5. On or about March 18, 1999, you were appointed as defense counsel in *Wapato v. Ruffo E. Quezada*, C98-03828 (Wapato Mun. Ct.). You thereafter presided as judge in *Sunnyside v. Ruffo E. Quezeda*, 55253 and 55254 (Sunnyside Mun. Ct.).

II. It is alleged that the Honorable Steven Michels, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for the Toppenish and Wapato Municipal Courts, may by the conduct indicated below, which is not excused by Canon 3(E) of the Code of Judicial Conduct, be in violation of Canons 1, 2(A), 2(B), and 5(C)(1) of the Code and the concerns expressed in Ethics Advisory Opinion No. 91-17.

> You contracted with the Cities of Toppenish and Wapato to provide public defender service in the municipal and district courts for those municipalities during the same period of time that you served as judge pro tempore in the same courts.

III. It is alleged that the Honorable Steven Michels, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for the Toppenish and Wapato Municipal Court and the Toppenish District Court, may by the pattern and practice of conduct indicated below, be in violation of Canons 1, 2(A), and 3(A)(1) of the Code of Judicial Conduct.

> You accepted guilty pleas without obtaining proper written plea statements from the defendant as required by law in numerous cases, including but not limited to *Toppenish v. Selena Kay Fox*, C00008447 (February 28, 2001); *Toppenish v. Rafael Garcia Hernandez*, C00008481 (February 27, 2001); *Toppenish v. Pascal Gutierrez*, C00008439 (February 27, 2001); *Toppenish v. Marvin Patnode*, C00008484 and C00008486 (February 26, 2001); *Toppenish v. Sara K. George*, C00006009 and C00008441 (February 26, 2001); *Toppenish v. Michele Wak Wak*, C00007864 (February 26, 2001); *Toppenish v. Jonathan Untuch*, C00008480 (February 20, 2001); *Toppenish v. J. Asuncion Cortez Gomez*, C00008478 (February 20, 2001).

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

In Re the Matter of) **No. 2969-F-92**
)
Honorable Steven Michels) **STATEMENT OF**
Sunnyside Municipal Court) **CHARGES**
401 Homer Street)
Sunnyside, WA 98944-1354) (Filed Aug. 27, 2001)

I. BACKGROUND

The Honorable Steven Michels ("Respondent") is now, and was at all times referred to in this document, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for the Toppenish Municipal Court. On June 12, 1998 and March 1, 1999, complaints were filed with the Commission on Judicial Conduct that led to the current charges. On January 11, 2000, the Commission on Judicial Conduct sent Respondent a letter informing him that the Commission was commencing initial proceedings against him. A Statement of Allegations was enclosed and a response was invited. Respondent responded to the Statement of Allegations on February 3, 2000. On June 6, 2001, the Commission sent Respondent an Amended Statement of Allegations and invited a response, which Respondent submitted on July 11, 2001.

II. CONDUCT GIVING RISE TO CHARGES

I. Respondent engaged in a pattern or practice of presiding as judge in Toppenish Municipal Court cases in which he has also been appointed as defense counsel:

(a) *Toppenish v. Henry Logie*, C00002180. Respondent was appointed as defense counsel on or about July 24, 1996. On September 23, 1998, the defendant was found guilty of DUI and sentenced to 365 days with 320 days suspended. Respondent presided as judge at a hearing on November 4, 1998 and reviewed the defendant's request for "release for orientation" the following day. The defendant failed to appear for a review hearing before the regular judge on December 14, 1998, and the hearing was reset for January 27, 1999, before Respondent. Respondent presided as judge at that hearing and continued the case for 30 days.

(b) *Toppenish v. Marshall Hannigan*, C00003677. Respondent was appointed as defense counsel on or about July 7, 1997. On November 4, 1998, Respondent presided as judge at a hearing at which he entered a finding of guilty on one count and guilty to a lesser charge on the second count and imposed a $850 fine with $400 suspended.

(c) *Toppenish v. Evan C. DoubleRunner*, C00004013. The defendant was charged with DUI. Respondent was appointed as defense counsel on or about October 19, 1997. Thereafter, the defendant applied for a deferred prosecution. Respondent presided as judge at a review hearing on March 18, 1998 and continued the case for four weeks. Respondent presided at another review hearing on November 4, 1998 and continued the case for 60 days. The defendant did not appear at the next scheduled hearing, and the regular judge issued a bench warrant on January 15, 1999. On January 27, 1999, Respondent presided as judge a hearing at which he recalled the warrant and set a warrant fee of $100.

(d) *Toppenish v. Anselmo Cantu*, C00004396. The defendant was charged with driving with a suspended license. Respondent was appointed as defense counsel on or about July 14, 1998. The defendant pleaded guilty on July 29, 1998. Sentencing was initially set before the regular judge, but on October 20, 1998, was reset before Respondent for November 4, 1998. Respondent presided as judge for the criminal calendar that day. He continued this defendant's sentencing for a month and informed the defendant that he could not get a driver's license for two years.

(e) *Toppenish v. Jose A. Sandoval*. In cause number C00003683, Respondent was appointed as defense counsel on or about October 21, 1997. In cause numbers C00003193, C00004164, and C00004165, Respondent was appointed as defense counsel on or about January 8, 1998. In cause numbers C00004276, C00004277, C00004278, Respondent was appointed as defense counsel on or about January 29, 1998. In cause number C00004451, Respondent was appointed as defense counsel on or about March 31, 1998. Respondent presided as judge at a hearing on all of these cases on November 4, 1998 and ordered that the defendant be committed "on all charges."

(f) *Toppenish v. Jesus R. Gudino*, C00004890. Respondent was appointed as defense counsel on or about September 15, 1998. On November 4, 1998, Respondent presided as judge at a hearing at which he found the defendant guilty of negligent driving, placed him on two years probation, and imposed a 30 day suspended sentence and a $1,470 fine, with $650 suspended.

(g) *Toppenish v. Aileen H. Jimmy*, C00005051. Respondent was appointed defense counsel on or about August 31, 1998. The defendant entered into a stipulation without finding and was placed on probation. She later failed to appear at a hearing, and a warrant was issued for her arrest. On September 13, 1999, Respondent presided as judge at the hearing to clear that warrant and ordered the warrant recalled.

(h) *Toppenish v. Victoria J. Napoleon*, C00005212. The defendant was charged with DUI. Respondent was appointed defense counsel on or about November 24, 1998. Shortly thereafter, the defendant petitioned for a deferred prosecution. Respondent presided as judge at a hearing on January 27, 1999, found that the defendant had an evaluation, and continued the case for 30 days.

(i) *Toppenish v. Earl N. Patrick*. In C00005923, Respondent was appointed as defense counsel on or about November 18, 1999. In C00005879, Respondent was appointed as defense counsel on or about September 29, 2000. Respondent presided as judge on an FTA/bail hearing in both cases on February 20, 2001. Respondent set bail at $600 in one case and $1100 in the other and ordered the defendant held for the regular judge.

(j) *Toppenish v. Santos Rivas*, C00006564, C00006565, C00006566. Respondent was appointed defense counsel on or about August 17, 1999. On September 13, 1999, Respondent presided as judge at a hearing at which he entered findings of guilty on five counts, sentenced the defendant to 90 days with 88 days suspended, and imposed fines totaling $3675 with $1550 suspended.

(k) *Toppenish v. Juan A. Salcedo*, C00006982. Respondent was appointed as defense counsel on or about April 20, 2000. The defendant failed to appear for a scheduled hearing on August 9, 2000, and a bench warrant was issued. The regular judge set bail at $1000 bail, with $100 warrant costs. An FTA hearing was set before Respondent for February 22, 2001. Respondent conducted a hearing by telephone. He set bail at $2500 and ordered the defendant held for the regular judge.

(l) *Toppenish v. Collette R. Patrick*, C00007555. Respondent was appointed as defense counsel on or about May 25, 2000. The defendant failed to appear at a hearing on January 31, 2001. The regular judge issued a bench warrant and set bail at $500 with $100 warrant costs. The case was set for an FTA hearing before Respondent on February 20, 2001. Respondent conducted that hearing by telephone. He ordered the defendant held for the regular judge and continued bail at $600.

II. Respondent engaged in a pattern and practice of accepting guilty pleas without obtaining proper written plea statements from the defendant as required by law in numerous cases, including *Toppenish v. Selena Kay Fox*, C00008447 (February 28, 2001); *Toppenish v. Rafael Garcia Hernandez*, C00008481 (February 27, 2001); *Toppenish v. Pascal Gutierrez*, C00008439 (February 27, 2001); *Toppenish v. Marvin Patnode*, C00008484 and C00008486 (February 26, 2001); *Toppenish v. Sara K. George*, C00008441 (February 26, 2001); *Toppenish v. Michele Wak Wak*, C00007864 (February 26, 2001); *Toppenish v. Jonathan Untuch*, C00008480 (February 20, 2001); *Toppenish v. J. Asuncion Cortez Gomez*, C00008478 (February 20, 2001). The same forms (captioned "Defendant's Rights, Plea, Request for Jury/Non Jury Trial, and for an Attorney") are used both for guilty and not guilty pleas. There are no spaces on the form for listing the elements of the crime or the factual basis for the plea.

III. BASIS FOR COMMISSION ACTION

The Commission has determined that probable cause exists to believe that Respondent has violated Canons 1, 2(A), 3(A)(1), 3(D), 5(C)(1) and Application section (A)(2)(b) preceding Canon 1 of the Code of Judicial Conduct (CJC) which state:

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining and enforcing high standards of judicial conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility.

Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges should avoid impropriety and the appearance of impropriety in all their activities.

(A) Judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

Judges shall perform the duties of their office impartially and diligently.

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it. . . .

. . . .

(D) Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(b) the judge previously served as a lawyer. . . .

CANON 5

Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties.

(C) Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties or exploit their judicial position.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

(A) Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions . . . is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.

(2) . . . (b) A person who has been a pro tempore judge should not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by the Rules of Professional Conduct.

IV. RIGHT TO FILE A WRITTEN ANSWER

In accordance with CJCRP 20, Respondent shall file a written answer to this Statement of Charges with the Commission and serve a copy on disciplinary counsel within twenty-one (21) days after the date of service of the Statement of Charges. As provided by CJCRP 21(a), failure to timely answer shall constitute an admission of the factual allegations. In the event Respondent fails to answer within the prescribed time, the Statement of Charges shall be deemed admitted. The Commission shall proceed to determine the appropriate discipline.

DATED this 27th day of August, 2001.

COMMISSION ON JUDICIAL
CONDUCT OF THE STATE OF
WASHINGTON

/s/ David Akana
David Akana
Executive Director
P.O. Box 1817
Olympia, WA 98507

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In re the Matter of:	)	No. 2969-F-92
The Honorable Steven L. Michels Toppenish Municipal Court	)	**STIPULATION, AGREEMENT AND ORDER OF REPRIMAND**

The Commission on Judicial Conduct and the Honorable Steven L. Michels, Pro tem Judge of The Toppenish Municipal Court, do hereby stipulate and agree as provided for herein. This stipulation is submitted pursuant to CJCRP 23 and shall not become effective until approved by the Washington Commission on Judicial Conduct.

The Commission on Judicial Conduct is represented in these proceedings by its counsel, Ernest D. Greco, and the Honorable Steven L. Michels is representing himself.

STIPULATED FACTS

1. The Honorable Steven Michels ("Respondent") was at all times referred to in this document, Judge Pro Tempore for the Toppenish Municipal Court.

2. Respondent engaged in a pattern or practice of presiding as judge in Toppenish Municipal Court cases in which he has also been appointed as defense counsel:

(a) Toppenish v. Henry Logie, C00002180. Respondent was appointed as defense counsel on or about July 24, 1996. On September 23, 1998, the defendant was found guilty of DUI and sentenced to 365 days with 320 days suspended. Respondent presided as judge at a hearing on November 4, 1998 and reviewed the defendant's request for "release for orientation" the following day. The defendant failed to appear for a review hearing before the regular judge on December 14, 1998, and the hearing was reset for January 27, 1999, before Respondent. Respondent presided as judge at that hearing and continued the case for 30 days.

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(c) *Toppenish v. Evan C. DoubleRunner*, C00004013. The defendant was charged with DUI. Respondent was appointed as defense counsel on or about October 19, 1997. Thereafter, the defendant applied for a deferred prosecution. Respondent presided as judge at a review hearing on March 18, 1998 and continued the case for four weeks. Respondent presided at another review hearing on November 4, 1998 and continued the case for 60 days. The defendant did not appear at the next scheduled hearing, and the regular judge issued a bench warrant on January 15, 1999. On January 27, 1999, Respondent presided as judge a hearing at which he recalled the warrant and set a warrant fee of $100.

(d) *Toppenish v. Anselmo Cantu*, C00004396. The defendant was charged with driving with a suspended license. Respondent was appointed as defense counsel on or about July 14, 1998. The defendant pleaded guilty on July 29, 1998. Sentencing was initially set before the regular judge, but on October 20, 1998, was reset before Respondent for November 4, 1998. Respondent presided as judge for the criminal calendar that day. He continued this defendant's sentencing for a month and informed the defendant that he could not get a driver's license for two years.

(e) *Toppenish v. Jose A. Sandoval*. In cause number C00003683, Respondent was appointed as defense counsel on or about October 21, 1997. In cause numbers C00003193, C00004164, and C00004165, Respondent was appointed as defense counsel on or about January 8, 1998. In cause numbers C00004276, C00004277, C00004278, Respondent was appointed as defense counsel on or about January 29, 1998. In cause number C00004451, Respondent was appointed as defense counsel on or about March 31, 1998. Respondent presided as judge at a hearing on all of these cases on November 4, 1998 and ordered that the defendant be committed "on all charges."

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30 day suspended sentence and a $1,470 fine, with $650 suspended.

(h) *Toppenish v. Aileen H. Jimmy*, C00005051. Respondent was appointed defense counsel on or about August 31, 1998. The defendant entered into a stipulation without finding and was placed on probation. She later failed to appear at a hearing, and a warrant was issued for her arrest. On September 13, 1999, Respondent presided as judge at the hearing to clear that warrant and ordered the warrant recalled.

(i) *Toppenish v. Victoria J. Napoleon*, C00005212. The defendant was charged with DUI. Respondent was appointed defense counsel on or about November 24, 1998. Shortly thereafter, the defendant petitioned for a deferred prosecution. Respondent presided as judge at a hearing on January 27, 1999, found that the defendant had an evaluation, and continued the case for 30 days.

(j) *Toppenish v. Earl N. Patrick*. In C00005923, Respondent was appointed as defense counsel on or about November 18, 1999. In C00005879, Respondent was appointed as defense counsel on or about September 29, 2000. Respondent presided as judge on an FTA/bail hearing in both cases on February 20, 2001. Respondent set bail at $600 in one case and $1100 in the other and ordered the defendant held for the regular judge.

(k) *Toppenish v. Santos Rivas*, C00006564, C00006565, C00006566. Respondent was appointed defense counsel on or about August 17, 1999. On September 13, 1999, Respondent presided as judge at a hearing at which he entered findings of guilty on five counts, sentenced the defendant to 90 days with 88 days suspended, and imposed fines totaling $3675 with $1550 suspended.

(n) *Toppenish v. Juan A. Salcedo*, C00006982. Respondent was appointed as defense counsel on or about April 20, 2000. The defendant failed to appear for a scheduled hearing on August 9, 2000, and a bench warrant was issued. The regular judge set bail at $1000 bail, with $100 warrant costs. An FTA hearing was set before Respondent for February 22, 2001. Respondent conducted a hearing by telephone. He set bail at $2500 and ordered the defendant held for the regular judge.

(o) *Toppenish v. Collette R. Patrick*, C00007555. Respondent was appointed as defense counsel on or about May 25, 2000. The defendant failed to appear at a hearing on January 31, 2001. The regular judge issued a bench warrant and set bail at $500 with $100 warrant costs. The case was set for an FTA hearing before Respondent on February 20, 2001. Respondent conducted that hearing by telephone. He ordered the defendant held for the regular judge and continued bail at $600.

3. Respondent engaged in a pattern and practice of accepting guilty pleas without obtaining proper written plea statements from the defendant as required by law in numerous cases, including *Toppenish v. Selena Kay Fox*, C00008447 (February 28, 2001); *Toppenish v. Rafael Garcia Hernandez*, C00008481 (February 27, 2001);

Toppenish v. Pascal Gutierrez, C00008439 (February 27, 2001); *Toppenish v. Marvin Patnode*, C00008484 and C00008486 (February 26, 2001); *Toppenish v. Sara K. George*, C00008441 (February 26, 2001); *Toppenish v. Michele Wak Wak*, C00007864 (February 26, 2001); *Toppenish v. Jonathan Untuch*, C00008480 (February 20, 2001); *Toppenish v. J. Asuncion Cortex Gomez*, C00008478 (February 20, 2001). The same forms (captioned "Defendant's Rights, Plea, Request for Jury/Non Jury Trial, and for an Attorney") are used both for guilty and not guilty pleas. There are no spaces on the form for listing the elements of the crime or the factual basis for the plea.

AGREEMENT

1. Based on the foregoing stipulated facts, Respondent agrees that while a pro-tem Judge of the Toppenish Municipal Court, he did violate Canons 1, 2(A), 3(A)(1), and 3(D)(1)(b) of the Code of Judicial Conduct (CJC) by presiding as judge in cases in which he represented the defendant and by accepting guilty pleas without obtaining proper written statements on plea of guilty from the defendant.

2. Respondent agrees to appear before the Commission and accept a written reprimand as described in RCW 2.64.010(2) and CJCRP Terminology and Rule 6.

3. Respondent agrees that he will refrain from repeating the violations in the future.

4. In accepting this stipulation, the Commission takes into account the fact that Respondent has previously been admonished for a Canon violation (*In re Michels*, No. 98-2832-F-78, October 1, 1999), and that the current

violations involve a pattern of misconduct which occurred in the courtroom, in Respondent's official capacity, which reflected on the integrity of the judiciary. The Commission also takes into account that Respondent was not exploiting his office to satisfy personal desires or intentionally violating his oath of office, but attempting to provide legal and judicial services in an impoverished community; and that Respondent cooperated with the Commission's investigation and stopped acting as Judge Pro Tempore after being informed of the allegations.

5. Respondent states that he has either consulted or had an opportunity to consult with counsel of his choosing regarding this stipulation and proceeding. Respondent voluntarily enters into this stipulation.

6. Respondent agrees that by entering into this Stipulation and Agreement he hereby waives his procedural rights and appeal rights pursuant to the Commission on Judicial Conduct Rules of Procedure and Article IV, Section 31 of the Washington State Constitution in this proceeding.

____________________ Honorable Steven J. Michels, Respondent	____________________ Date
/s/ Ernest D. Greco Ernest D. Greco, Counsel Commission on Judicial Conduct	9-11-01 Date

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In re the Matter of the	**No. 2969-F-92**
HONORABLE STEVEN L. MICHELS Sunnyside Municipal Court	**ANSWER TO STATEMENT OF CHARGES AND AFFIRMATIVE DEFENSES**
	(Filed Oct. 25, 2001)

I.

COMES NOW, THE HONORABLE STEVEN L. MICHELS, who respectfully denies that any conduct described in the Commission's complaint violates the Canons as charged.

FURTHERMORE, THE HONORABLE STEVEN L. MICHELS alleges the Commission has mischaracterized and misrepresented said conduct, and, therefore denies the same.

II.

AS AFFIRMATIVE DEFENSES AND COUNTER-ALLEGATIONS, THE HONORABLE STEVEN L. MICHELS ALLEGES AS FOLLOWS:

1. The information used as the basis of the Commission's complaint has been unlawfully and illegally obtained, and, therefore, the complaint should be dismissed.

2. In allowing unlawful and illegally obtained information as a basis for the complaint, the Commission is allowing itself to become involved in a political dispute

which exceeds the authority of the Commission and the complaint should be dismissed.

3. After receiving the initial information which led to these complaints, the Commission held that information for as long as several years without notifying the Judge involved. After the Judge initially responded, the Commission waited more than 18 months to bring formal charges. By waiting such a long period of time, the Judge is denied the right to thoroughly defend himself as the tapes which contain the verbatim record of the proceedings involved have been destroyed. On this basis, i.e. the basis of laches, equity, statute of limitations and/or not proceeding in a timely fashion, the complaint should be dismissed. Furthermore, the Judge has been denied his right to defend himself and to due process therein. Also on this basis, the complaint should be dismissed.

4. In this case the Commission, in allowing anonymous complaints, has deprived the right of the Judge to face his accuser as is required in all civilized proceedings. Only in inquisitions such as those conducted by barbarian societies, is the accused denied the right to confront his accusers. The accuser, herein, is not a court clerk or other similar type of a person who needs to be protected from retribution by the victim Judge. In the present case, the actions complained of are not filed by any party to the action, i.e. no defendant, prosecutor, attorney or any other involved person with the particular case has filed any complaint. The complaints have been filed by a vindictive judge, or someone under his direction, who peruses the Court data base for such information. In such cases, the Commission is without standing to proceed. The Commission is allowing an abuse of its function and the complaint should be dismissed.

5. Many of the allegations are of the type, that, if the Judge committed an error, the proper remedy is an appeal to the Superior Court. RCW 3.02.02 provides review of proceedings in a court of limited jurisdiction shall be by the Superior Court. The question of whether a guilty plea form is adequate is one for the Superior Courts and the appellate courts to decide, not this Commission. The Commission is exceeding and abusing its authority in such cases and such complaints should be dismissed.

6. The Commission applies its rules differently to different victim judges. In my situation the Commission made its allegations public upon my being served the complaint. In Judge Ray Reid's case, the Commission did not make public the complaint for 2 months after the service. This unequal application of the rules shows the Commission is biased and as a result of this illegal bias, the complaint should be dismissed. **In fact, the Commission should not be allowed to prosecute the good judges it is supposed to protect until it is investigated by the State Supreme Court and the Legislature in this regard.**

7. The Commission is biased in this case and should not act as a judge. The Commission oversees the investigation of these allegations. The Commission then alleges the victim judge is guilty of these allegations and hires prosecutors to prosecute the victim judge. The Commission then sits as the judge in the matter. This deprives the victim judge of due process as he is entitled to a judge who has not previously made up its mind in the matter. Here the Commission alleges the judge is guilty and then says it sits as an unbiased judge in the matter. On the basis of the impossibility of receiving a fair hearing, the complaint should be dismissed.

8. The Commission hires special attorneys to prosecute the victim judges. The Commission refuses to hire attorneys to represent the victim judges. In my situation, I sat as Pro Tem Judge without pay in an impoverished community who could not afford to hire a Pro Tem Judge. In fact, the impoverished community does not seem to even have insurance coverage to protect its Pro Tem Judge in such a situation. The Commission is denying the victim judge's right to be represented by an attorney by not providing the funding for an attorney. Such a deprivation takes the judge's property and rights without due process of law. On this basis, the complaint should be dismissed.

9. The issue of my sitting as Judge Pro Tem is now moot and those allegations should be dismissed. All of the allegations are alleged to have occurred when I sat as Judge Pro Tem without pay. I have now resigned that position. The problem has been extinguished. The complaint should be dismissed.

10. The question before the Commission of my using inadequate guilty plea forms has also been addressed by the Commission. Judge Reid of the Toppenish Municipal Court has been prosecuted by the Commission and the guilty plea forms have been revised. The guilty plea problem is moot and the complaint should be dismissed. It is the duty of the sitting judge to use proper guilty plea forms in court, not the responsibility of a temporary substitute judge. It is common practice for Pro Tem Judges to use the forms of the court in which he substitutes. Pro Tems do not carry their own guilty plea forms to another court. The Commission is prosecuting the wrong judge when it prosecutes the Pro Tem. The complaint should be dismissed.

11. When a Pro Tem Judge finds a defendant before him whom he has or is representing, it is not error to continue that case so another judge can hear the case. That resetting is an administrative function of the court and is not of such an ethical nature to merit prosecution by this Commission. The complaint should be dismissed.

12. There exist other affirmative allegations which the Judge reserves the right to address at the hearing.

13. Any sanction by this Commission against Judge Michels should relate to Judge Michels sitting in Toppenish, not in his own court (Sunnyside Municipal Court). Any sanction otherwise is improper and deprives the citizens of Sunnyside from choosing the judge they chose through their elected officials.

WHEREFORE, THE HONORABLE STEVEN L. MICHELS REQUESTS DISMISSAL OF THE COMPLAINT AGAINST HIM.

Respectfully submitted this 24th day of October, 2001.

/s/ Steven L. Michels
STEVEN L. MICHELS

BEFORE THE COMMISSION ON JUDICIAL CONDUCT OF THE STATE OF WASHINGTON

In Re the Matter of

The Honorable
Steven L. Michels
Sunnyside Municipal Court
401 Homer Street
Sunnyside, WA 98944-1354

No. 2969-F-92

DECISION AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND DISMISSAL

(Filed Feb. 7, 2002)

THIS matter came before the Commission (Vivian Caver, Harold D. Clarke, Antonio P. Cube, Sr., Gregory R. Dallaire, Nora Gallaher, Dale B. Ramerman, and John A. Schultheis) on February 1, 2002, for consideration of two motions for partial summary judgment filed by Disciplinary Counsel, two motions to dismiss filed by Respondent, and an "Objection to Additional Tapes and Court Documents" filed by respondent.

I. RECORD BEFORE COMMISSION

The record before the Commission for these motions consists of the following:

1. Statement of Charges filed August 27, 2001
2. Answer to Statement of Charges and Affirmative Defenses filed October 25, 2001
3. Motion for Partial Summary Judgment field October 30, 2001
4. Response to Motion for Partial Summary Judgment filed December 3, 2001

5. Reply to Response to Motion for Partial Summary Judgment filed December 5, 2001
6. Second Motion for Partial Summary Judgment filed December 27, 2001
7. Declaration of Disciplinary Counsel in Support of Second Motion for Partial Summary Judgment filed December 27, 2001 (with Exhibits 1 and 2)
8. Respondent's Memorandum in Opposition to Second Motion for Partial Summary Judgment filed January 25, 2002
9. Declaration of Counsel In Opposition to Second Motion for Partial Summary Judgment filed January 25, 2002, (with Exhibit 1)
10. Sworn Statement of Steven L. Michels filed January 25, 2002
11. Affidavit of Alayne Michels filed January 25, 2002
12. Disciplinary Counsel's Reply to Response to Second Motion for Summary Judgment filed January 30, 2002
13. Additional Declaration of Disciplinary Counsel in support of Second Motion for Partial Summary Judgment filed January 30, 2002 (with Exhibits 3, 4 and 5 attached)
14. Motion to Dismiss Cases Involving Alleged Detective Guilty Plea Forms filed November 26, 2001
15. Motion to Dismiss and Sworn Declaration filed November 26, 2001

16. Response to Respondent's Motions to Dismiss field January 17, 2002
17. Declaration of Disciplinary Counsel in Regard to Response to Respondent's Motion to dismiss filed January 17, 2002, (with Exhibit 1)
18. Objection to Additional Tapes and Court Documents and Declaration of Judge Michels filed December 7, 2001
19. Response to Objection to Additional Tapes and Court Documents filed December 10, 2001
20. Declaration of Carol Boothby dated December 4, 2001

II. DISCIPLINARY COUNSEL'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AS TO AFFIRMATIVE DEFENSES

In the two motions for partial summary judgment Disciplinary Counsel has moved to dismiss the first eleven of Respondent's affirmative defenses.

First Defense. The first defense is that the information used as the basis of the Complaint has been unlawfully and illegally obtained. Respondent has put nothing into the record to support this defense, nor has he provided any legal basis for the defense. In his own motion called "Objection to Additional Tapes" he raises questions about tapes taken from the Sunnyside Municipal Court. But his objection would appear to be the tapes are not relevant. In the same motion he objects to a subpoena on the ground it was improperly issued. This contention has no merit. When a motion for summary judgment is made, the party with the burden on the issue must come forward with evidence to support the claim. See discussion in section IV below. Because respondent has offered no evidence in support of this defense, it will be dismissed.

Second Defense. The second defense is that "in allowing unlawful and illegally obtained information as a basis for the complaint, the Commission is allowing itself to become involved in a political dispute which exceeds the authority of the Commission". In the portion of respondent's deposition included in the record by Disciplinary Counsel, respondent states that the basis for this defense is that he believes the Judicial Information System was used unlawfully to obtain information used in this case. Respondent does not explain or provide any authority for this assertion. See the discussion in section IV below. Like the first defense, respondent has not put anything in the record to support this defense, and it will be dismissed.

Third Defense. This defense is that after receiving the initial complaint, the Commission failed to promptly notify the respondent and delayed an unreasonable period of more than 18 months before filing the Statement of Charges. Respondent asserts this delay constitutes laches and a denial of due process. Respondent had no right to notice of the filing of a complaint with the Commission. Due process imposes no such requirement, and it is contrary to article IV, section 31; RCW 2.64.113; and CJC rule 11, to say nothing of common sense.

Laches may be a defense. But a laches defense based on a lapse of less than 3 years is difficult to prove. In this case all of the alleged violations occurred or continued to occur within 3 years before the filing of the Statement of Charges. Respondent has the burden of coming forward with some evidence to support this defense. Asserting, incorrectly, that the charges go back 5 years and that "the only verbatim recordings of the proceedings usually have been destroyed after such a time period" does not meet this burden. Respondent, by affidavit based on personal knowledge, must show that but for the delay, the tapes would be available, and that the tapes would make a difference if available. Respondent alleges with respect to the allegation that he failed to comply with court rules when taking a plea, while he used a plea form that does not comply, he substantially complied because of what he orally advised defendants when taking a plea. But he also admits he was unaware of the requirement that a defendant be advised of the elements of the offense, and did not so advise defendants. Given these admissions, tapes of what he did say could not show there was substantial compliance.

Respondent's third defense will be dismissed.

Fourth Defense. Respondent next defense is totally without merit. There is no right in a criminal proceeding or a CJC proceeding to confront an anonymous complainant.

Fifth Defense. Respondent's fifth defense is that respondent's errors were errors of law for which the remedy is an appeal. The Commission recognizes this defense, except when the errors of law form a pattern of conduct that supports a conclusion the judge, by repeatedly violating the law, is also violating the Code of Judicial Conduct. This defense will not be dismissed. Disciplinary counsel has the burden with respect to the plea issue of proving there was a pattern of conduct.

Sixth Defense. The sixth defense is without merit. Respondent alleges the Commission applied different standards to different judges, and alleges that in the case of Judge Ramon Reid, the Commission did not publicize the complaint against him for two months after it was filed, whereas in respondent's case the public was advised upon respondent being served. Respondent fails to note that the Commission did not file a statement of charges against Judge Reid. Nor has he shown how if his assertions were true, this would be a defense.

Seventh Defense. Respondent's next defense is that the Commission, by investigating, determining whether probable cause exists, approving the filing of the information, and sitting as the fact finder, deprives respondents of a fair hearing. The type of procedures followed by the Commission have been upheld in **Withrow v. Larkin,** 421 U.S. 35 (1975), and the specific procedures upheld in **In re Deming**, 108 Wn.2d 82 (1987).

Eight Defense. The eighth defense is that the Commission refuses to hire an attorney for "victim judges." There is no right to an attorney in a civil proceeding, which this is. Respondent's legally unsupported defense will be dismissed.

Ninth Defense. Respondent's ninth defense is that since respondent alleges that since he is no longer sitting as a pro tem judge, the issues are moot. Respondent, however, continues to sit as a judge. The matter is not moot and the Commission has jurisdiction. This defense provides no basis for a dismissal and will be dismissed.

Tenth Defense. The tenth defense is that since Respondent was sitting as a pro tem judge when he is alleged to have used legally insufficient plea forms, he should not be charged since the forms are the responsibility of the regular judge. The court rules and case law make no such distinction. While this defense may be relevant in determining what discipline should be imposed in case of a violation, it is not a defense to whether there is a violation, and will be dismissed as such.

Eleventh Defense. The last defense sought to be dismissed is the contention that when a party appears before a judge, and the judge as an attorney has represented that party in the same case, it is not a violation of the Code for the judge to simply set the case over for hearing before another judge. This may be a defense, and it will not be dismissed.

III. DISCIPLINARY COUNSEL'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO SECTION II OF THE STATEMENT OF CHARGES

In the Second Motion for Partial Summary Judgment, Disciplinary Counsel "moves for summary judgment as to all of the allegations in Section II of the Statement of Charges." Section II of the Statement of Charges alleges "respondent engaged in a pattern or practice of presiding as judge in Toppenish Municipal Court cases in which he has also been appointed as defense counsel" and then gives 12 examples; and alleges "respondent engaged in a pattern and practice of accepting guilty pleas without obtaining proper written plea statements from the defendant as required by law in numerous cases" and then cites nine cases. Section II does not allege a violation of the Code of Judicial Conduct.

Because Section II of the Statement of Charges merely alleges certain conduct occurred without attaching legal significance to that conduct, the Commission cannot grant a summary judgment with respect to Section II. In granting a summary judgment a court does more than merely say there are no factual issues. Rather it says in effect, "as to issue A there are no material issues of fact, and the moving party is entitled to a judgment as a matter of law on issue A." Section II does not seek a judgment (i.e., a finding of a violation of the Code) and hence this partial motion for summary judgment must be denied.

The Commission also notes that with respect to the allegation that respondent both represented defendants and functioned as a judge in the same case, there may be factual issues concerning exactly what respondent did in some cases cited, which may be relevant to whether there was a violation in some cases, and what sanction would be appropriate if there is a violation. Given respondent's answers to the requests for admission, his deposition testimony and his briefs filed in connection with these motions, it does not appear there is any factual issue as to the allegations in Section II, paragraphs 1(a), (b), (c), (e), (j) or (l) of the Statement of Charges and those allegations are deemed admitted.

On the issue of whether respondent properly advised defendants at the time of taking pleas, there appears to be no issue about whether the plea forms respondent used failed to comply in material respects with the court rules, or about whether respondent failed to advise defendants of the elements of the charge to which they were proposing to plead guilty.

IV. RESPONDENT'S MOTIONS

Respondent has also moved to dismiss the allegations regarding guilty pleas on three grounds: the plea forms are the responsibility of the regular judge and respondent was sitting only as a pro tem; the regular judge has been prosecuted for having the wrong plea forms and the problem has been corrected; and this is a legal issue rather than a matter for the commission.

These defenses have already been discussed and dealt with in Disciplinary Counsel's two motions for summary judgment. The fact respondent may have been acting as a pro tem may be relevant to discipline in case of a violation, but not to whether there is a violation. The other defenses have no merit and will be dismissed.

Respondent's second motion to dismiss relates to three of his affirmative defenses.

First he alleges an unreasonable delay. This defense has already been dismissed above.

Second, respondent claims the Commission is responsible for the respondent's alleged violations because it did not immediately inform the respondent of the violations. Respondent misconceives the role of the Commission and apparently is unfamiliar with the Commission's rules. The Code of Judicial Conduct imposes on the judge the duty to comply with the law; the Commission is not charged with the responsibility of telling judges how to do their job. This defense has been dismissed above.

Third, respondent moves for dismissal on the ground of the Commissions rules regarding confidentiality, and the fact that Disciplinary Counsel did not send tapes to respondent before they were requested. Respondent fails to show how either argument provides a ground for dismissal. Confidentiality is mandated by the Constitution as well as the CJC rules. Disciplinary Counsel under CJC Rule 22 is obligated to provide within 14 days of the filing of the Answer to a Statement of Charges all of the materials considered by the Commission in determining that probable cause exists. There was no showing of any failure to comply with this requirement. Nor is there any showing of prejudice. This motion for dismissal will be denied.

Finally, respondent has filed an "Objection to Additional Tapes and Court Documents". This is not a defense to the Statement of Charges. If evidence of alleged violations of the Code of Judicial Conduct by the respondent in Sunnyside Municipal Court is offered in evidence, respondent can object to that evidence, and the objection will be ruled on at the time.

Respondent also objects to the issuance of a subpoena, signed by the Chair of the Commission, who is not sitting as a member of the panel that will hear and decide his case. There is no basis for respondent's objection. Nor was any information provided to the Chair in connection with the request for the subpoena.

V. ORDER

Accordingly it is hereby

ORDERED that

1. Respondent's affirmative defenses numbered 1-4 and 6-10 are hereby dismissed as a matter of law.
2. Evidence respondent was sitting as a pro tem judge when he took the guilty pleas cited as a

violation, may be relevant to what sanctions should be imposed in case a violation is found.

3. Respondent's objection to subpoenaed of tapes from Sunnyside Municipal Court may be raised should those tapes be offered in evidence.

4. Except as stated in 2 and 3 above, Respondent's motions are denied.

Each of these rulings was concurred in by at least a quorum of the panel assigned to hear this matter.

Dated February 6, 2002
/s/ Dale B. Ramerman
Dale B. Ramerman,
Presiding Officer,
for the Commission on
Judicial Conduct

BEFORE THE COMMISSION ON JUDICIAL CONDUCT

OF THE STATE OF WASHINGTON

In Re the Matter of Honorable Steven Michels Sunnyside Municipal Court 401 Homer Street Sunnyside, WA 98944-1354	No. 2969-F-92 **AMENDED STATEMENT OF CHARGES**

(Filed Feb. 20, 2002)

I. BACKGROUND

The Honorable Steven Michels ("Respondent") is now, and was at all times referred to in this document, Judge of the Sunnyside Municipal Court and Judge Pro Tempore for the Toppenish Municipal Court. One June 12, 1998 and March 1, 1999, complaints were filed with the Commission on Judicial Conduct that led to the current charges. On January 11, 2000, the Commission on Judicial Conduct sent Respondent a letter informing him that the Commission was commencing initial proceedings against him. A Statement of Allegations was enclosed and a response was invited. Respondent responded to the Statement of Allegations on February 3, 2000. On June 6, 2001, the Commission sent Respondent an Amended Statement of Allegations and invited a response, which Respondent submitted on July 11, 2001.

II. CONDUCT GIVING RISE TO CHARGES

I. Respondent violated Canons 1, 2(A), 3(D)(1)(b), and Application section (A) preceding Canon 1 of the Code of Judicial Conduct (CJC) by engaging in a pattern or practice of presiding as judge in Toppenish Municipal Court cases in which he has also been appointed as defense counsel, including but not limited to:

(a) *Toppenish v. Henry Logie*, C00002180. Respondent was appointed as defense counsel on or about July 24, 1996. On September 23, 1998, the defendant was found guilty of DUI and sentenced to 365 days with 320 days suspended. In violation of Canons 1, 2(A), 3(D(1)(b) and Application section (A) preceding Canon 1 of the CJC, Respondent presided as judge at a hearing on November 4, 1998 and reviewed the defendant's request for "release for orientation" the following day. The defendant failed to appear for a review hearing before the regular judge on December 14, 1998, and the hearing was reset for January 27, 1999, before Respondent. In violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, Respondent presided as judge at that hearing and continued the case for 30 days.

(b) *Toppenish v. Marshall Hannigan*, C00003677. Respondent was appointed as defense counsel on or about July 7, 1997. On November 4, 1998, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, Respondent presided as judge at a hearing at which he entered a finding of guilty on one count and guilty to a lesser charge on the second count and imposed a $850 fine with $400 suspended.

(c) *Toppenish v. Evan C. DoubleRunner*, C00004013. The defendant was charged with DUI. Respondent was appointed as defense counsel on or about October 19, 1997. Thereafter, the defendant applied for a deferred prosecution. Respondent presided as judge at a review hearing on

March 18, 1998, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, and continued the case for four weeks. Respondent presided at another review hearing on November 4, 1998, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, and continued the case for 60 days. The defendant did not appear at the next scheduled hearing, and the regular judge issued a bench warrant on January 15, 1999. On January 27, 1999, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC Respondent presided as judge a hearing at which he recalled the warrant and set a warrant fee of $100.

(d) *Toppenish v. Anselmo Cantu,* C00004396. The defendant was charged with driving with a suspended license. Respondent was appointed as defense counsel on or about July 14, 1998. The defendant pleaded guilty on July 29, 1998. Sentencing was initially set before the regular judge, but on October 20, 1998, was reset before Respondent for November 4, 1998. Respondent presided as judge for the criminal calendar that day, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC. He continued this defendant's sentencing for a month and informed the defendant that he could not get a driver's license for two years.

(e) *Toppenish v. Jose A. Sandoval.* In cause number C00003683, Respondent was appointed as defense counsel on or about October 21, 1997. In cause numbers C00003193, C00004164, and C00004165, Respondent was appointed as defense counsel on or about January 8, 1998. In cause numbers C00004276, C00004277, C00004278, Respondent was appointed as defense counsel on or about January 29, 1998. In cause number C00004451, Respondent was appointed as defense counsel on or about March 31, 1998. Respondent presided as judge at a hearing on all of these cases on November 4, 1998, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, and ordered that the defendant be committed "on all charges."

(f) *Toppenish v. Jesus R. Gudino*, C00004890. Respondent was appointed as defense counsel on or about September 15, 1998. On November 4, 1998, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC. Respondent presided as judge at a hearing at which he found the defendant guilty of negligent driving, placed him on two years probation, and imposed a 30 day suspended sentence and a $1,470 fine, with $650 suspended.

(g) *Toppenish v. Aileen H. Jimmy*, C00005051. Respondent was appointed defense counsel on or about August 31, 1998. The defendant entered into a stipulation without finding and was placed on probation. She later failed to appear at a hearing, and a warrant was issued for her arrest. On September 13, 1999, in violation of Canons 1, 2(A), 3(D(1)(b) and Application section (A) preceding Canon 1 of the CJC, Respondent presided as judge at the hearing to clear that warrant and ordered the warrant recalled.

(h) *Toppenish v. Victoria J. Napoleon*, C00005212. The defendant was charged with DUI. Respondent was appointed defense counsel on or about November 24, 1998. Shortly thereafter, the defendant petitioned for a deferred prosecution. Respondent presided as judge at a hearing on

January 27, 1999, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, found that the defendant had an evaluation, and continued the case for 30 days.

(i) *Toppenish v. Earl N. Patrick*. In C00005923, Respondent was appointed as defense counsel on or about November 18, 1999. In C00005879, Respondent was appointed as defense counsel on or about September 29, 2000. Respondent presided as judge on an FTA/bail hearing in both cases on February 20, 2001, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC. Respondent set bail at $600 in one case and $1100 in the other and ordered the defendant held for the regular judge.

(j) *Toppenish v. Santos Rivas*, C00006564, C00006565, C00006566. Respondent was appointed defense counsel on or about August 17, 1999. On September 13, 1999, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC, Respondent presided as judge at a hearing at which he entered findings of guilty on five counts, sentenced the defendant to 90 days with 88 days suspended, and imposed fines totaling $3675 with $1550 suspended.

(k) *Toppenish v. Juan A. Salcedo*, C00006982. Respondent was appointed as defense counsel on or about June 13, 2000. The defendant failed to appear for a scheduled hearing on August 9, 2000, and a bench warrant was issued. The regular judge set bail at $1000 bail, with $100 warrant costs. An FTA hearing was set before Respondent for February 22, 2001. Respondent conducted that hearing, in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC. He set bail at

$2500 and ordered the defendant held for the regular judge.

(l) *Toppenish v. Collette R. Patrick*, C00007555. Respondent was appointed as defense counsel on or about May 25, 2000. The defendant failed to appear at a hearing on January 31, 2001. The regular judge issued a bench warrant and set bail at $500 with $100 warrant costs. The case was set for an FTA hearing before Respondent on February 20, 2001. Respondent conducted that hearing in violation of Canons 1, 2(A), 3(D)(1)(b) and Application section (A) preceding Canon 1 of the CJC. He ordered the defendant held for the regular judge and continued bail at $600.

II. Respondent violated Canons 1, 2(A), 3(A)(1), and Application section (A) preceding Canon 1 of the Code of Judicial Conduct (CJC) by engaging in a pattern and practice of accepting guilty pleas without obtaining proper written plea statements from the defendant as required by law in numerous cases, including but not limited to: *Toppenish v. Selena Kay Fox*, C00008447 (February 28, 2001); *Toppenish v. Rafael Garcia Hernandez*, C00008481 (February 27, 2001); *Toppenish v. Pascal Gutierrez*, C00008439 (February 27, 2001); *Toppenish v. Marvin Patnode*, C00008484 and C00008486 (February 26, 2001); *Toppenish v. Sara K. George*, C00008441 (February 26, 2001); *Toppenish v. Michele Wak Wak*, C00007864 (February 26, 2001); *Toppenish v. Jonathan Untuch*, C00008480 (February 20, 2001); *Toppenish v. J. Asuncion Cortez Gomez*, C00008478 (February 20, 2001). The same forms (captioned "Defendant's Rights, Plea, Request for Jury/Non Jury Trial, and for an Attorney") are used both for guilty and not guilty pleas. There are no spaces on the form for listing the elements of the crime or the factual basis for the plea.

III. BASIS FOR COMMISSION ACTION

The Commission has determined that probable cause exists to believe that Respondent has violated Canons 1, 2(A), 3(A)(1), 3(D) and Application section (A) preceding Canon 1 of the Code of Judicial Conduct (CJC) which state:

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining and enforcing high standards of judicial conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code, Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges should avoid impropriety and the appearance of impropriety in all their activities.

(A) Judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

CANON 3

Judges shall perform the duties of their office impartially and diligently.

The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it. . . .

. . . .

(D) Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(b) the judge previously served as a lawyer. . . .

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

> **(A)** Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions . . . is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.

IV. RIGHT TO FILE A WRITTEN ANSWER

In accordance with CJCRP 20, Respondent may file a written answer to this Amended Statement of Charges with the Commission and serve a copy on disciplinary counsel by March 1, 2002.

DATED this 20th day of February, 2002.

COMMISSION ON JUDICIAL
CONDUCT OF THE STATE
OF WASHINGTON

/s/ David Akana
David Akana
Executive Director
P.O. Box 1817
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